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THE  
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BEING  
AN ACCOUNT OF  
*The Foreign Relations of the Country,*  
FROM THE FIRST TREATY WITH FRANCE, IN 1778, TO THE  
PRESENT TIME.

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SECOND EDITION—WITH ADDITIONS.

BY THEODORE LYMAN, JR.

IN TWO VOLUMES.

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# TREATIES, &c.

## CHAPTER I.

### TREATY OF GHENT OF 1814 WITH GREAT BRITAIN.

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**WE** shall give, in this chapter, an account of the different negotiations that led to the war of 1812 with Great Britain, and finally terminated in the peace of Ghent. We propose to divide this period into two parts;—the first relating to events immediately preceding the orders in council of 1807, and the other, comprehending the portion of time from that event to the peace above mentioned.

We have remarked in a preceding chapter that the treaty of 1794 in reality settled but few of the important points in discussion. If Europe had relapsed into its original condition of peace and quietness, this circumstance would have presented itself to the mind with little relief; but subsequent events gave to those questions an importance, no one could have anticipated. As the power of France increased on the land, that of England seemed, with corresponding industry and activity, to magnify itself on the ocean;—fresh conquests led to new blockades, and retaliation became a pretext for renewed and aggravated outrages on neutral rights. They were repeated and enforced every year with increased severity and an alarming augmentation of power, till a place of refuge or safety could be found for the neutral, neither on the ocean, nor in any part of the continent of Europe. The peace, or rather truce of Amiens, afforded a momentary respite, but with that slight exception, it must be considered that the two belligerents actually waged a maritime war upon America from the year 1792 to 1812.

Rufus King, of New-York, was appointed in May '96 minister plenipotentiary to the court of St. James, and remained till 1803, in that country.\* He discussed in a full and satisfactory manner the principal provisions of maritime

\* We shall give in this note a continuation, from the last chapter, of the hostile acts of Great Britain :—

“1797, April 11. Horatio Nelson declared Cadiz to be in a state of blockade.

“1799, March 22. All the ports of Holland declared in a state of rigid blockade.

“1799, Nov. 27. The blockade of March suspended.

“1803, June 24. Instructions issued, not to interrupt the direct trade between neutrals and the colonies of enemies, unless, upon the outward passage, contraband articles had been furnished by the neutrals.

“1804, January 5. Certain ports of Martinique and Guadaloupe declared in blockade. The siege of Curacoa converted into blockade.

“1804, August 9. A rigorous blockade established at the entrances of the ports of Fecamp, St. Vallery, and other places on the French coast.”

law, in which the United States feel an interest, though with the exception of two conventions in relation to the treaty of '94, already mentioned, he did not succeed in agreeing on any formal instrument, regulating the commerce or defining the rights of neutrals. To the article of impressment, Mr. King gave particular attention, and made great progress in securing an arrangement that would have afforded essential protection to our seamen. But it failed from a cause that will be hereafter mentioned. Violations of neutral rights, though very galling, were trifling during his residence in England, compared with those of the preceding or succeeding years. Mr. King returned to this country in 1803, and was succeeded by James Monroe of Virginia.\*—As it will be necessary to examine with some attention the points in dispute between the two countries, in giving an account of the treaty concluded with the British government in 1806 by Messrs. Monroe and Pinkney, we have presented only a very brief summary of Mr. King's negotiations. For the same reason, we shall pass rapidly over the diplomatic intercourse of Mr. Monroe. Early in 1804 he proposed to the British ministry, by direction of his government, a convention regulating the right of search, blockades, contrabands, &c. A copy of this document will be found in the state papers for that year. The war, between France and England, having been renewed in 1803, the British government having given indications of returning to her former maritime pretensions, and in consequence of the peace of Amiens, the commercial part of the treaty of London having expired in the autumn of the preceding year, it was matter of very pressing importance, not only that the rights of the neutral should be finally ascertained and secured, but that the trade of Great Britain and the United States should be placed upon a firmer and more permanent footing than the law of the respective countries afforded. From that period to the year 1815, the whole American commerce to the British

\* Robert Liston (afterwards Sir Robert Liston) succeeded Mr. Hammond, as envoy extraordinary and minister plenipotentiary. He was appointed in March 1796.

possessions, in every part of the world, rested upon the uncertain and most unsatisfactory protection of acts of Parliament. Undoubtedly, it might be expected, that mutual interest would maintain, on both sides, a continuance of such regulations, as should be just and equal. But the convention, submitted to lord Hawkesbury by Mr. Monroe, embraced only articles having a reference to our maritime rights; it failed, for the same reason that all other negotiations of the like tenor have failed, with the British government.

Matters stood in this situation till August, 1805, when, by an instruction of the British government, of the 17th, the "direct trade with the enemies' colonies was made subject to restrictions." This revived, in full force, the celebrated rule of the war of 1756. Few acts of the belligerents have more deeply wounded the rights of this country or done a more serious mischief to its commerce. We shall take an opportunity, in this place, in order to avoid future repetition, to compress into a brief form those general considerations, that belong to the history, application and justice of this assumed principle of maritime law.\*

This rule, generally called the rule of the war of '56, was then first universally promulgated, and applied in strict rigour, though it existed previous to that time, particularly in 1744.† An impression has generally prevailed, that it was not exercised during the war of the revolution; but Robinson, in the note to which we have just referred, furnishes undoubted evidence to the contrary; and, if the application was not universal, it was only because some of the enemies' colonies had been opened before the war, for

\* We refer the reader to a work, entitled "An Examination of the British Doctrine, which subjects to Capture a Neutral Trade, not open in time of peace." This dissertation was understood to have been written by Mr. Madison. One of the best productions on the other side, is "War in disguise, &c." by Mr. James Stephen, who made himself conspicuous, as a member of Parliament, on the American question. We shall, shortly, have occasion to refer to his speech on the orders in council.

† Robinson's Reports, vol. vi. Append. Note.

the purpose of supplying them with provisions. Here the colonial trade was not altered (*flagrante bello*) by the pressure of the enemy. In the admiralty courts, the principal discussions have been on the modifications or relaxations of the rule. We shall give the general principle in the words of the author before quoted :

“ The fundamental maxim of the trade being founded on a system of monopolizing to the parent state, the whole trade to and from her colonies, in time of peace, it is not competent to neutral states, in time of war, to assume that trade on particular indulgences, or on temporary relaxations, arising from the state of war. Such a trade is not entitled to the privileges and protection of a neutral character.”——“ The neutral has a right to carry on his accustomed trade. In time of peace, he is excluded from the colonial trade ; he, therefore, suffers no injury, in being excluded from it in time of war. If he is admitted to it, it is only in consequence of the pressure of the enemy. But a neutral has no right to interpose in a war, and afford aid to one of the belligerents. Whenever suspensions of the colonial system have been enacted by the mother country, before war, the admiralty has always respected them *flagrante bello*.”

The British government maintained, from the time the war with France began in 1792, to the peace of Amiens in 1802, and again upon the renewal of the war in 1803 till 1805, the substance and spirit of this rule. They did not allow the direct trade between the colonies and the mother country, but various relaxations mitigated the severity of the application. An indirect trade was permitted, and as proof, the courts required no other state of things than that the goods should have been fairly imported, and the duties paid on them ; a continuation of the voyage was, therefore, made to depend upon the evidence furnished. But the court of appeal, in the case of the *Essex*, in 1805, established that the trade was illegal, the continuity of the voyage not being broken. The sole reason of this extraordinary decision was, that the duties on the cargo had not been paid in money, but by a bond of the importer, a distinction, that embraced the whole foreign trade of the United States. The decision



rapidly and eagerly spread itself among the public and private armed vessels of Great Britain ; and in the course of a few months, the ports of that country were crowded with American vessels for trial.\*

The rule of '56, and its modifications, or relaxations, are liable to numerous objections. - A colony is part of a country, and, therefore, as much subject to commercial regulations as any other part of the country. In peace, the parent state has the whole monopoly of a colony ; in war, it has the same right to regulate its trade. A belligerent can acquire no rights to the territory of another, but by conquest ; or to control its trade, except upon the acknowledged principles of blockade or contraband, so far as the neutral is concerned. If neutrals are allowed to have, in war, only the trade permitted in time of peace, it is obvious, that as few limitations as possible should be put to this trade ; for war, at the best, cuts off a great deal of trade, in the customary form of con-

\* This decision of the Court of Appeals is not a deviation from the strict principle of the English government, in regard to the trade of a neutral with an enemy's colony ; but it was exceedingly fatal to the American commerce, from the circumstance, that the whole trade which it interrupted, had been safely and confidently conducted since, at least, 1801, not only under the protection of an opinion of the king's advocate general, officially communicated, but also of the order of August 1803. That instruction has, already, been cited ; but in 1801, the minister in England, Mr. King, having protested against certain decisions of the vice-admiralty courts, Lord Hawkesbury notified to him, in a formal manner, the opinion of the principal law officer of the crown, which is in these words:—"The high court of admiralty have expressly decided (and I see no reason to expect that the court of appeals will vary the rule), that landing the goods and paying the duties in the neutral country, breaks the continuity of the voyage, and is such an importation as legalizes the trade ; though the goods be reshipped in the same vessel, and on account of the same neutral proprietors, and forwarded for sale to the mother country."—The decision of 1805 was founded on this consideration, that as the duties were not actually paid, the greater part being returned in the shape of debentures (a provision of the custom house laws of this country, with which the English do not appear to have been acquainted), the importation was not a bona fide one. See judgment of Sir William Grant, in case of *William*.—*Robinson*, vol. v. p. 387.

trabands and blockades. Neutrality is not a new state of things, as it respects the conduct of the neutral;—he is placed in that situation by the conduct of other parties. The state of war or peace of a third party cannot, by any natural right, affect the right of a neutral nation to conduct its commerce, for neutrality is a continuation of its former condition. The condition of the belligerent is changed;—the right to disturb the condition of the neutral is, therefore, a conventional one. If the war opens a new course of trade in innocent articles, the neutral has a right to take advantage of it; he may in this way remunerate himself for the privations the laws of nations compel him to submit to. A neutral has a right to carry neutral commodities from one port to another of the mother country. Why not from a colony to the mother country? In time of war, the mother country may alter her commercial regulations;—she may allow the neutral to export or to bring to her articles not permitted in time of peace. We see no difference, in this respect, between the trade of a colony and that of the mother country. Both are systems of monopoly; both subject to such commercial regulations as the parent state may choose to adopt. This right cannot be conceded to the belligerent, because it would really throw into his hands the principal part of the commerce of the world. The neutral has no interest in the war; and the just construction of the laws of war is, that they should abridge the rights of a third party to the smallest possible degree;—for example, the whole business of contraband is one of convention. We allow, too, the legitimacy of a blockade only on the consideration, that the belligerent has actual possession of the waters, or the territory, and has the means of establishing and enforcing on it his own municipal regulations, precisely as he could do at home. Great Britain has, also, repeatedly suspended her own colonial acts, in time of war, and opened new trades to the neutral. Contrabands, as they are specified in most conventions, constitute but a very small portion, indeed, of the trade of every country. But to supply one belligerent with them, may do a vast injury to the other. On this ground, the neutral

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foregoes the slight benefit of a trade in those articles. The colonial trade has a very different character. To arrest vessels, engaged in this business, upon any part of the ocean, is conceding to the belligerent the exercise of a great power, exerted in an oppressive manner.

In itself the right of navigation is, of course, as unlimited as the ocean, and the right of commerce depends on the pleasure of the nation, whose ports we wish to frequent. The privileges of commerce do not depend upon the laws of nations, but upon the will of the parties; and these privileges are regulated by treaties. Nations are not under any obligation to account to the world for their commercial regulations; and regulations that depend upon treaties are (of course) not affected by a war in which either party may engage. War does not deprive neutrals of a single right,—their commerce remains unshackled, with the exception of those articles, that are directly and immediately useful in war. Undoubtedly, it is for the benefit of the belligerent to contract as much as possible the trade of the neutral; but utility does not constitute a right. The neutral abandons the trade in contrabands because the belligerent considers these articles dangerous;—it is difficult to understand why he should abandon a trade, perfectly innocent. If belligerents are allowed to cut off the trade of neutrals,—to abridge their commerce, it is difficult to conceive, why the neutral should not be allowed to profit by all the trade that is open. Great Britain allows a relaxation in her navigation laws in time of war;—she allows a trade to a colony whose supplies are intercepted by the war. She allowed a license trade, to a very great extent, during the war with France from 1802 to 1811.\* The rule of '56 annihilates the neutral character; it makes all trading nations parties to a war; it denies to a neutral the right of commerce during the war, for if the principle may be made to apply to a colony, it is obviously perfectly easy and just to transfer the whole seve-

\* From a statement, made to the House of Commons, it appears that 53,277 licenses to trade with the enemy, were granted during this period.

city to the mother country. But, in truth, the belligerent has nothing to do with enforcing the municipal laws, the colonial acts of its enemy.

Mr. Pitt died in January 1806, and the formation of a new ministry in the beginning of February, in which Mr. Fox was Secretary of the Foreign Department, awakened hopes that American affairs would assume a more favourable aspect. No change, however, in the views or proceedings of government, took place. The new ministry appear to have imbibed the sentiments that governed former administrations. England had entered too deeply upon a system of policy, to be disturbed by the private or personal wishes or opinions of individuals. Nothing seemed to remain to ministers, from whatever political party they were taken, but to keep the nation firm and steady in its course. Mr. Fox died in September of the same year.

Our own government determined, at this time, to make a fresh and stronger effort for a maritime arrangement; not only induced to this step by a change of ministry in England, but feeling every day more and more the great necessity of securing a formal protection for neutral commerce. In May, a commission was issued, appointing Mr. Monroe, still resident in London, and William Pinkney, of Maryland, jointly and severally, ministers plenipotentiary and envoys extraordinary to the court of St. James.\* They were directed to propose the terms of a convention more ample, and embracing a greater number of points, than the one unsuccessfully presented in 1804 by Mr. Monroe. These commissioners concluded, on the 31st December 1806, a treaty of amity, navigation and commerce with lords Holland and Auckland. Although this instrument was not ratified by the United States, yet, as the most favourable arrangement ever made with Great Britain, it is in every view an important event in the diplomatic history of the country. We shall briefly

\* It is proper to state in this place, that Anthony Merry, appointed in February 1803, succeeded Mr. Liston as envoy extraordinary and minister plenipotentiary. He remained till the appointment of Mr. Erskine.

state the principal provisions of it. The articles of the treaty of 1794, not expired, were confirmed in their full tenor;—the trade to India was made a direct one;\* the treaty of '94 allowed any trade to, but only a direct trade from, the British possessions in the East Indies;—a reciprocal and perfect liberty of commerce and navigation was agreed on between the United States and British dominions in Europe. As to the West Indies, all parties remained in full possession of their rights; but the colonial trade (11th article) with an enemy's colony, was regulated in a manner satisfactory to this country. The commissioners were permitted, by their instructions, to adopt the principle, in relation to a colonial trade, that is found in the supplement of the treaty (added in October) of June 1801, between England and Russia. This was not a departure from the principle of the rule of '56, though not a full enjoyment of the right on the part of the belligerent; it was only an abridgment of the right. The United States could not consent to destroy the continuity of the voyage more than by *landing the goods and securing the duties on changing the vessel*. This is all the government could concede, and no other evidence of this fact could be furnished, than the documents of the custom house officers. The American government have never acknowledged the validity of the rule of '56; but as the commerce of the country had accommodated itself to the various relaxations, introduced since '92, and as this commerce was exceedingly valuable,—without renouncing any principle whatever, they were desirous of conferring upon it all the consistence and protection, circumstances would admit. The precise meaning of the 11th article, taken in connexion with the British orders, instructions and decisions of courts, does not appear to have been altogether understood. At the time the convention was made, the only point in controversy, on the application of the rule of '56, between the two governments was, what constituted a *continuity of a voyage*.

\* In this respect Jay's treaty was preferable, the homeward trade being only a direct one. A direct outward trade would be attended with many inconveniences to this country.

The convention defined this ; and, in reality, obtained all the United States at the time sought. Provisions were exempted from the list of contraband. This was a great improvement on the treaty of '94. On the right of search and impressment, no stipulations, at all effectual, were made. Our government, in their instructions, consented to the right of search,—but with such modifications as exist in conventions with other states ;—that is, that the neutral should never be compelled to send his boat on board an armed vessel, nor be required to assist the belligerent in the very detention, from which he is suffering. It is sufficient, that he should be detained, and it is more convenient for the belligerent to send, as he is supposed to be prepared for these purposes. It is, also, in many cases exceedingly dangerous for the neutral to undertake that business ; the crew being often small, and the boats bad. The papers of the vessel, and the lives of the men, are, in this way, put in jeopardy.

The President, without consulting the Senate, refused to ratify this treaty, principally because the instrument did not contain a provision against impressments on the high seas. It is certainly now a subject of great doubt whether this proceeding was judicious. The treaty gave a permanent, and, in most respects, a satisfactory character to American commerce, for ten years at least, in Europe, and in the East and West Indies ; and, compared with previous and subsequent treaties, is probably the most favourable arrangement ever made with Great Britain. It was concluded with lords Holland and Auckland, under the Grenville administration, of which Mr. Fox was a principal member till his death. This country could not have expected to obtain such advantageous terms from any other ministry. The parties had laboured with great zeal upon the points in dispute ; and they brought to the consideration of the subject uncommon talents and an unusual portion of experience. It cannot be questioned but that they entered into the undertaking with a sincere desire to conduct a long, irritating, and unprofitable discussion to an honourable conclusion.

This treaty is another of the illustrations furnished by

the diplomatic history of the country, of the impracticability of obtaining from England an acknowledgment of the general laws of nations, touching the right of search and impressment, as well as the difficulty of making any satisfactory arrangement concerning the West India trade. It is quite evident, that England would not have peaceably renounced her construction of maritime law, and if this country had insisted on it as indispensable, a war would have proved inevitable. But this, America never has done ; the war of 1812 was not declared on these grounds. One administration refused to sign a convention, in which there was no stipulation on the subject of impressment ; but we are not aware that the denial of this right, on the part of England, was ever made by America a condition of peace or war ; it has always been considered matter of negotiation. If the country was not prepared to proceed to hostilities for the most just protection of the rights of her own seamen, it is not easy to understand the policy that should dictate the rejection of a treaty, in other respects advantageous, which was simply silent on this topic. The government could have seen nothing in the situation of England, that promised a relaxation of the principle ; and Messrs. Monroe and Pinkney were convinced, it was impossible to make any satisfactory arrangement on this head.

England has ever insisted, with remarkable zeal, on the abstract right of impressment, not so much, perhaps, on account of the number of her seamen in foreign service, as to prevent them from leaving her own. She has appeared to think there was a great demand for her men in the United States, and that American commerce offered uncommon temptations. On the other hand, the undoubted truth is, that the population of America has, generally speaking, produced sailors fully equal to the demand. Foreign seamen have never been preferred in any of her ports ; and if any preference was shown, it was certainly rather for men from the Baltic than for British seamen. A large supply of foreign sailors could not have found employment either in the public or private service of this country. The American

navy, in times of peace, comparatively absorbing few sailors, the demand was altogether for the merchant service. That demand was uniform, and the increase regular, for great numbers of men are never unexpectedly wanted on sudden emergencies, as in England. The native population of the country, therefore, not only supplied the demand, but easily kept pace with the increase, a remark, which, we believe, admits of but few exceptions till the peace of 1814, 15.

This is one of the earliest species of employment, in which the Americans made themselves known. While under the crown, American seamen were subject to all the liabilities of native born subjects, and many were impressed, particularly during Lord Chatham's wars with France. It was well known to the American colonial or provincial governments, that the practice of granting powers to the admiralty to issue press warrants was considered legal and constitutional in the British courts. This power, it is true, has been constantly disputed; and, till the time of the celebrated argument of Sir Michael Foster, in 1743, was submitted to with very great reluctance. Mr. Justice Foster considers the practice to be of ancient date, to have been "uniformly continued to the present time, and, on that ground, to have now become a part of the common law. No statute has, however, expressly declared this power to be in the crown. But it is implied in a great number." This circumstance formerly gave rise to much embarrassment and difficulty. But the legality of press warrants is now established; and as a number of decisions have been made concerning them, it is not likely that any doubt, as to their legality, could exist in a court of justice. Indeed, we have the following words of lord Mansfield on this point:—"The power of pressing is founded upon immemorial usage allowed for ages. If not, it can have no ground to stand upon, nor can it be vindicated or justified by any reason but the safety of the state. The practice is deduced from that trite maxim of the constitutional law of England, that private mischief had better be submitted to, than that public detriment and inconvenience should ensue. Though it be a legal power, it may,



like many others, be abused in the exercise of it." As an authority of a character entirely different from that of lord Mansfield, we shall quote the words of lord Chatham. This is an extract from a remarkable speech he made on the subject of the Faulkland Islands, in November '70. Lord Chatham was at the time in the opposition:

"My Lords, the subject on which I am speaking, seems to call upon me, and I willingly take this occasion to declare my opinion upon a question, on which much wicked pains have been employed to disturb the minds of the people, and to distress government. My opinion may not be very popular, neither am I running the race of popularity. I am, myself, clearly convinced, and I believe every man, who knows any thing of the English navy, will acknowledge that, without impressing, it is impossible to equip a respectable fleet within the time in which such armaments are usually wanted. If this fact be admitted, and if the necessity of arming upon a sudden emergency should appear incontrovertible, what shall we think of those men, who, in the moment of danger, would stop the great defence of their country. Upon whatever principle they may act, the act itself is more than faction—it is labouring to cut off the right hand of the community. I wholly condemn their conduct, and am ready to support any motion that may be made for bringing those aldermen, who have endeavoured to stop the execution of the admiralty warrants, to the bar of this house. My Lords, I do not rest my opinion upon necessity. I am satisfied, that the power of impressing is founded upon uninterrupted usage. It is the *Consuetudo Regni*, and part of the common law prerogative of the crown."\*

By the laws of nations and the tenor of treaties, a belligerent has a right, only, to take out of a neutral vessel enemies engaged in military service; no where has he a right to take out his own subjects. The municipal law, that is the law of allegiance of a country, cannot extend to the high seas—if so, it would apply in peace as well as in war, and

\* See, also, a passage in Junius (vol. ii. p. 351. Woodfall's edition) written about the same time, together with the opinions of Messrs. Wedderburn, Glyn and Dunning.

to property as well as to persons. If a sovereign has once a right to the persons of his subjects on the high seas, he always has that right. He may want their services as well against an internal as an external enemy, and for other purposes than those of war. If he has a right to take, he has, also, a right to search. But on the occasion of every war, in which England has been engaged, American seamen have been visited with the arbitrary and pernicious effects of this system.\* It is true it is a municipal regulation of a foreign nation; but in practice it affects the neutral more deeply than the subjects of a government, from which the law emanates. A great many projects to remedy the evil have been conceived; but none have been satisfactory to both parties, as America would not consent to any arrangement, that should not secure her citizens from impressment on the *high seas*. Mr. King in 1803, was on the eve of concluding an advantageous convention with Lord St. Vincent, the first Lord of the admiralty. It was in these words:—"No seaman or seafaring person shall upon the high seas, and without the jurisdiction of either party, be demanded, or taken out of any ship or vessel belonging to the citizens, or subjects of one of the parties, by the public or private armed ships, or men of war belonging to or in the service of the other party; and strict orders shall be given for the due observance of this engagement."† As the United States did not object that their vessels should be visited in port under the protection of the consul, this article afforded all necessary security. Lord St. Vincent ultimately refused to sign, on the pretext,

\* We are aware that the evil is one of long standing between the governments. Seamen were impressed as early as 1792 on the coast of Africa, and in British ports in the first year of the war between England and France.

† June 1797 to 1801—2059 applications for seamen impressed including many made previous to those years by Mr. King and Mr. Pinkney—102 only British subjects—less than 1-20th of the whole impressed—1142 discharged as not being British subjects—more than one half—805 for further proof—with a strong presumption that the whole, or a greater part, at least, were aliens.

that the narrow seas should be exempted from the operation of the provision. It was not to be expected that the doctrine of the *mare clausum* would be revived on that occasion, but it served effectually to frustrate the convention.

“Is there a question of contraband, is the vessel destined to a blockaded port in violation of established principles, or does she contain enemies’ property, the greatest extent to which the maritime law is carried by any nation? In these cases she is conducted to port for trial, the parties are heard by an impartial and responsible tribunal, and are heard again by appeal, if they desire it. Are any of the passengers on board the neutral vessel in the naval or military service of the enemy? If such are found, they are made prisoners, but as prisoners they have rights, which the opposite belligerent is bound to respect. This practice, (impressment) however, looks to other objects than are here recited. It involves no question of belligerent on one side, and of neutral on the other. It pursues the vessel of a friend for an unlawful purpose, which it executes in a manner equally unlawful. Every commercial vessel of the United States, that navigates the ocean, is liable to be invaded by it, and not an individual on board any of them is secure, while the practice is maintained. It sets up every officer of his majesty’s navy as a judge, from whose decision there is no appeal. It makes him a judge not of property, which is held more sacred, nor of the liberty of his fellow subjects only, however great the trust and liable to abuse on the main ocean, but of that of the citizens of another power, whose rights, as a nation, are trampled on by the decision; a decision, in rendering which every rule of evidence is violated, as it puts the proof of innocence on the accused, and is further highly objectionable, as there is too much reason to believe that it has been often guided more by the fitness of the party for service than any other circumstance.

“It is possible that this practice may in certain cases, and under certain circumstances have been extended to the vessels of other powers, but with them there was an infallible criterion to prevent error. It would be easy to distinguish between an Englishman and a Spaniard, an Italian or a Swede; and the clear irresistible evidence of his national character, and, perhaps, of his desertion, would establish the British claim to the individual, and reconcile

the nation, into whose service he had entered, to his surrender. But the very circumstances, which would constitute an infallible criterion in those cases, would be sure to produce endless error in the other. Who is so skilful in physiognomy as to distinguish between an American and an Englishman, especially among those whose profession and whose sea terms are the same? It is evident that this practice, as applied to a foreign nation to any great extent, has grown out of the American revolution, and that it is impossible for the United States not to see in it the assertion of a claim, which is utterly incompatible with that great event. When the character of this claim, and the pernicious tendency of the practice are maturely weighed, it must furnish cause for surprise, that some just and friendly arrangement has not long since been adopted to prevent the evils incident to it."

We shall now return to the regular course of this narration. We have already said the American government refused to ratify the treaty of 1806. But notice of this circumstance was not received in England till July of the next year; where Mr. Pinkney remained as minister plenipotentiary. We have not spoken of the proceedings of the British ministers in this country with our own government during the period, of which a brief account has just been given.—It would be but a repetition; and, in reality, with the exception of Spain to a certain extent, all our important negotiations have been conducted in Europe; particularly with France and England.

During the spring of 1807, the vexatious conduct of the English on the American coast continued. The unfortunate, disastrous and profligate affair of the Chesapeake\* took

\* *United States frigate Chesapeake,*

CHESAPEAKE BAY, JUNE 23, 1807.

SIR,—Yesterday, at 6, A. M. the wind became favourable, and knowing your anxiety that the ship should sail with all possible despatch, we weighed from our station in Hampton Roads, and stood to sea. In Lynnhaven bay we passed two British men of war, one of them the *Bellona*, the other the *Melampus*; their colours flying, and their appearance friendly. Some time afterwards, we observed one of the two line of battle ships that lay off cape Henry to get under way, and

place in June, and on the second day of July following, the President issued a proclamation, requiring all British vessels,

stand to sea ; at this time the wind became light, and it was not until near four in the afternoon that the ship under way came within hail. Cape Henry then bearing n. w. by w. distance 3 leagues. The communication which appeared to be her commander's object for speaking the Chesapeake, he said he would send on board ; on which I ordered the officer, he presented me with the enclosed paper No. 1. from the captain of the Leopard, and a copy of an order from admiral Berkeley, which another officer afterwards took back, to which I gave the enclosed answer, No. 2, and was waiting for his reply. About this time I observed some appearance of a hostile nature, and said to captain Gordon, that it was possible they were serious, and requested him to have his men sent to their quarters with as little noise as possible, not using those ceremonies which we should have done with an avowed enemy, as I fully supposed their arrangements were more menace than any thing serious. Captain Gordon immediately gave the orders to the officers and men to go to quarters, and have all things in readiness ; but before a match could be lighted, or the quarter bill of any division examined, or the lumber on the gun deck, such as sails, cables, &c. could be cleared, the commander of the Leopard hailed ; I could not hear what he said, and was talking to him, as I supposed, when she commenced a heavy fire, which did great execution.

It is distressing to me to acknowledge, that I found from the advantage they had gained over our unprepared and unsuspecting state, did not warrant a longer opposition ; nor should I have exposed this ship and crew to so galling a fire had it not been with a hope of getting the gun deck clear, so as to have made a more formidable defence : consequently our resistance was but feeble. In about twenty minutes after I ordered the colours to be struck, and sent lieutenant Smith on board the Leopard, to inform her commander that I considered the Chesapeake her prize. To this message I received no answer ; the Leopard's boat soon after came on board, and the officer who came in her demanded the muster book. I replied the ship and books were theirs, and if he expected to see the men he must find them. They called on the purser, who delivered his book, and the men were examined, and the three men demanded at Washington, and one man more, were taken away. On their departure from the ship, I wrote the commander of the Leopard the enclosed No. 3, to which I received the answer No. 4. On finding that the men were his only object, and

bearing a king's commission to depart, and forbidding all to enter the waters of the United States. The government,

that he refused to consider the ship his prize, and the officers and crew his prisoners, I called a council of our officers, and requested their opinion relative to the conduct it was now our duty to pursue. The result was, that the ship should return to Hampton Roads, and there wait your further orders.

I have sent this letter to you by Captain Gordon, in order that you may have an opportunity of getting such information as you may wish.

With great respect, I have the honour to be, &c.

(Signed)

JAMES BARRON.

Hon. ROBERT SMITH, *Secretary of the Navy, Washington.*

#### No. 1.

The captain of his Britannic majesty's ship *Leopard*, has the honour to enclose to the captain of the United States' ship *Chesapeake*, an order from the honourable vice admiral Berkeley, commander in chief of his majesty's ships on the North American station, respecting some deserters from the ships (therein mentioned) under his command, and supposed to be now serving as part of the crew of the *Chesapeake*.

The captain of the *Leopard* will not presume to say any thing in addition to what the commander in chief has stated, more than to express a hope, that every circumstance respecting them may be adjusted in a manner that the harmony subsisting between the two countries may remain undisturbed.

*H. M. ship Leopard, at sea,*

*June 22, 1807.*

*To the commander of the U. S. ship Chesapeake.*

#### No. 2.

I know of no such men as you describe. The officers that were on the recruiting service for this ship, were particularly instructed by the government, through me, not to enter any deserters from his Britannic majesty's ships; nor do I know of any being here: I am also instructed never to permit the crew of any ship that I command to be mustered by any other but their own officers. It is my disposition to preserve harmony, and I hope this answer to your despatch will prove satisfactory.

JAMES BARRON.

*At sea, June 22, 1807.*

*To the commander of his B. M. ship Leopard.*

#### No. 3.

Sir,—I consider the frigate *Chesapeake* your prize, and am ready

also, determined, at once, to suspend all negotiation, till reparation was made for the outrage. The immunity of a national ship from search, for any purpose whatever, is not contested by any nation; and the terms of reparation, demanded by the American government, on this occasion, were not only a formal disavowal of the act and restoration of the four men taken out, but as a security for the future, an entire abolition of the practice of impressment under the American flag. It was a particular injunction to the American minister in London not to treat of the affair of the Chesapeake separately, but to consider all those injuries, which properly fell under the same head, as one entire subject. For this assault upon its dignity and sovereignty, the country had a right to exact a solemn and public form of retribution and acknowledgment. Both England and France have, within the last century, sent an extraordinary ambassador for the purpose of offering an apology for a violation of national sovereignty, infinitely less important.

This mode of discussion met with an unfavourable reception from the British government. The act of the officer

to deliver her to any officer authorized to receive her. By the return of the boat I shall expect your answer, and have the honour to be, &c.

JAMES BARRON.

*Chesapeake, at sea, June 22, 1807.*

*To the commander of his B. M. ship Leopard.*

No. 4.

Sir,—Having to the utmost of my power fulfilled the instructions of my commander in chief, I have nothing more to desire, and must in consequence proceed to join the remainder of the squadron, repeating that I am ready to give you every assistance in my power, and do most sincerely deplore that any lives should have been lost in the execution of a service which might have been adjusted more amicably, not only with respect to ourselves; but the nations to which we respectively belong.

I have the honour to be, &c.

S. P. HUMPHREYS.

*Leopard, at sea, June 22, 1807.*

*To the commander of the U. S. ship Chesapeake.*

{ 3 killed,  
18 wounded.

had been early disavowed, and a promise of ample reparation made. But England refused to consider this matter in connexion with the subject of impressment, or any other point then under discussion. The proclamation of the President was, also, regarded as in some degree assuming, by the act of the American government itself, restitution for this unfortunate business, England professing to consider the measure altogether in a hostile light, and as precluding the offer of reparation they were disposed to make. Here Mr. Monroe's mission terminated.

The ground, the ministry took on this occasion, was attended with every advantage they could hope to derive from delay, though their ships were exposed the whole time to the very great inconvenience of being deprived of their usual ports and places of resort on the American coast. They could not have desired a war;—there had been, perhaps, no period since the French revolution, when policy more clearly pointed out to them the propriety of avoiding difficulties with this country. Napoleon had, a short time before, succeeded in overwhelming, at the disastrous battle of Jena, the strength and pride of Prussia; and he appeared no longer to have an enemy to the west of the Vistula. When the proclamation of the President was issued, before notice of it could even be transmitted to the British government, the alternative of transferring the negotiation to the United States, or of declaring war, was offered to England. Mr. Canning (September 3,) at once informed Mr. Monroe, that a minister would be sent to the United States, provided with proper instructions to bring this unhappy dispute to an honourable conclusion. G. H. Rose was accordingly sent, and arrived in this country in January 1808. But his mission was altogether unsatisfactory. He had positive instructions not to treat of the affair of the Chesapeake, while the proclamation of the President was in force; nor was he permitted at all to connect the subject of impressments from private vessels with that matter. The British government still considered the proclamation as a hostile measure, as assuming retribution; and, while in force, no arrangement for the wrong done could be made on



equal terms. They had at once disavowed the act of the officer, and voluntarily made an offer of reparation. On the other hand, the American government regarded the proclamation as a measure of precaution, for the purpose of protecting their citizens and shores from outrages, not only similar to this, but from a repetition of scenes scarcely less a violation of national rights, though presenting a less striking character. The proclamation was not directed alone to the affair of the Chesapeake ; it had in view the conduct of the British officers on the coast, from the beginning of the European war. This consideration of the matter on the part of America immediately put an end to the mission of Mr. Rose.

The affairs of the two countries were, at this time, in a more aggravated and alarming state than they had been since 1794. We have now reached the close of the year 1807 ; it is the termination of the first period we proposed to consider in this chapter ; a period immediately preceding the orders in council.\* With the brief exception of a single year, France and England, since 1793, had been constantly at war. America, setting out with the fairest prospects, and with the sincerest determination to maintain an exact and impartial neutrality, saw every year fresh inroads made on her rights and commerce ;—she was more and more impressed with the necessity either of retiring altogether from the ocean, and adopting the policy, recommended by one of her Presidents in a work written during the revolution war, —or of becoming a party in the contest. Her studious, unceasing negotiations had availed nothing ; one scheme of a convention the British government refused to accept, —another the American government refused to ratify ;—not a maritime right, not a commercial privilege was secured ;—her diplomatic labours had not meliorated a single decree of the belligerents, had not delayed for a single hour their rapid course, in sweeping to destruction neutrals and all their rights. We cannot say the country bore these indignities with composure ; but, at least, they bore them with patience,

\* First orders promulgated in November 1807.

in the hope that relief would still be found in negotiation. At the time of the attack on the Chesapeake, few persons believed the forbearance of the government or of the people, could have been put to a more cruel trial. But our neutrality survived even that affair.

In the mean time important events had taken place in Europe. In November 1807, the first orders in council were issued; and on the 2d of February of the next year, a copy was communicated to Congress by the President. They will be found, at length, in the documents accompanying that message. On account of their length, we shall here give only an abstract, for which we are indebted to an intelligent writer of the day:

"All trade directly from America to every port and country of Europe, at war with Great Britain, or from which the British flag is excluded, is totally prohibited. In this general prohibition, every part of Europe, with the exception at present of Sweden, is included; no distinction whatever is made between the domestic produce of America, and that of the colonies reexported from thence.

"The trade from America to the colonies of all nations, remains unaltered by the present orders. America may export the produce of her own country, but that of no other, directly to Sweden.

"With the above exception, all articles, whether of domestic or colonial produce, exported by America to Europe, must be landed in England, from whence it is intended to permit their reexportation, under such regulations as may hereafter be determined.

"By these regulations, it is understood that duties are to be imposed on all articles so reexported; but it is intimated, that an exception will be made in favour of such, as are the produce of the United States, that of cotton excepted.

"Any vessel, the cargo whereof shall be accompanied with certificates of French consuls abroad of its origin, shall, together with the cargo, be liable to seizure and condemnation.

"Proper care is taken that the operation of the orders shall not commence until time is afforded for their being known to the parties interested."

The orders had been preceded by a proclamation of the British government, (October 16, 1807,) recalling and pro-

hibiting British seamen from serving foreign princes. We do not intend to go into the question of the priority of these orders or of the French decrees ; though it is well known they were issued on the solitary and broad ground of retaliation ; the British courts of admiralty ever considered them in that light. But in war, retaliation has a very comprehensive meaning ; a thing entirely unwarrantable in itself, is excused on this pretext. And, after all, it is in some degree uncertain how far the British government can reasonably profit of this justification ; though, as it respects the neutral, not affording the slightest apology, relief, or consolation. Any one, who will take the pains to look into the very full examination on the orders in council, before the House of Commons,\* will, at least, be inspired with some doubt as to the amount of mischief the Berlin decree did British commerce. We admit the matter is a perplexed one, particularly as it related to the course of exchange ; and we are far from being in a situation to give an opinion on it. But, in another point, retaliation furnished a still feebler excuse. The British orders were a much greater grievance to the neutral than the Berlin and Milan decrees ; for England possessed, in some degree, the power to execute them. And it is a remarkable combination of circumstances, that the very navy, directed to enforce these orders, was at the same moment virtually engaged in protecting neutral commerce from the operation of the French decrees. The right of retaliation was not exercised for a year ; for no

\* On the petitions from Liverpool, Manchester and London, against orders in council in 1808. These petitions were heard by evidence, and by counsel (Mr. Brougham) at the bar of the House. One of the most concise, and, perhaps, ablest defences of the "orders," will be found in the speech of Mr. Stephen, delivered in the House of Commons, March 6th, 1809, on a motion of Mr. Whitbread, relative to the "late overtures of the American government." This speech is reported at length in App. to Parliamentary Debates, vol. xiii. It is, however, just to state, that one of the principal opponents of the orders in England, declared that British trade suffered very much two or three months previous to the orders in council, in consequence of the Berlin decree, or of the great power of Bonaparte on the continent.

other notice was, in the outset, taken of the Berlin decree, than in prohibiting, in January 1807, all trade between those countries of Europe so much under the influence of France as to reject British trade.\* England waited to ascertain whether the French would carry their threats into execution, and whether neutrals would acquiesce in those maritime usurpations.

The British orders produced an extreme sensation in this country. The neutral was placed between confiscation and confiscation; if he went to a French port without touching at a British, and paying such taxes or duties as the government chose to impose, he was liable to capture;—and if he touched at the British, he was certain of condemnation when he arrived at the French. The actual loss by capture, to the declaration of war in June 1812, was, in itself, very great; but a still more severe loss arose from the alarm these orders spread through the mercantile part of the community, from the necessity merchants were under of so shaping their adventures as not to expose their property to destruction, and from the various restrictive acts, to which the American government thought itself compelled to resort for

\* The effect of the order of January, was to forbid the coasting trade of the enemy. On the part of England this might have been a judicious undertaking, but it is quite evident that the ground assumed on this occasion was, that the British government did not choose to interrupt the commerce of neutrals. When General Armstrong protested against the Berlin decree, within a month after its promulgation, he received an answer from the French minister Decrès, that the instrument did not apply to America. During the first twelve months of this decree, American commerce increased with England, and the case of the *Horizon*, and of the first orders in council, were both known at the same time in the United States. We have in '96, '97, and in 1800, specimens of decrees somewhat similar to the Berlin. They were never executed out of the limits of France. As a neutral government, the aid of America could not be justly invoked in checking the evils, the acts of one belligerent did to the commerce of the other. And, after all, the misfortune of this country was, that whether the belligerents adopted offensive measures, or simply those of retaliation, America was one of the first and greatest victims.

the protection of the vessels and of the rights of the citizens. In consequence, there was a vast capital lying idle, and a great number of enterprising, industrious, intelligent citizens living without employment. To shield itself against these constant inroads on its neutrality, the United States had recourse only to such measures as a desire of peace could dictate. It will be seen that they were not vigorous enough for the occasion. Negotiation abroad having failed, a course of municipal regulations, in the shape of restrictions and prohibitions, was commenced in 1806. The first measure was an act to forbid the importation of certain goods, wares and merchandise from Great Britain and its dependencies, after November of that year. This was followed by the embargo of December 1807, and the nonintercourse of March 1809 ;—we do not mention the partial or supplementary acts. From the first nonimportation act, the nation was subjected, the greater part of the time, to a restrictive system ; but the trade was never so extensive, or more profitable, than the two years immediately preceding this period. The imports and exports were both greater than they had been in any former years, and the commerce of the country was obviously making a rapid and solid progress. In the course of sixteen years, the export trade had acquired an “ augmentation of 89,331,109 dollars ;” but in 1807, it was reduced in an instant to the aggregate of 22,430,960 dollars, only 1,677,862 more than the amount in 1791, the second year after the organization of the present government.\* The restrictive system was adopted to secure the rights and save the property of the citizens, to prepare the country for a war, or to prevent, as much as possible, circumstances of irritation and aggression on the part of the belligerents ;—an experiment attended with little success. The belligerents were too powerful, too deeply engaged, to be diverted from their course by measures so entirely passive. It is impossible to compel countries like France and England, abounding in such infinite resources, to

\* Seybert. Statistical Annals.

abandon a whole system of policy, particularly of the magnitude of the one for which they were then contending, by depriving them, for a few years, of the commerce of a single neutral state.

In the summer of 1808, it was intimated to the British government, that the embargo, and the acts supplementary to it, would be repealed, as it respected that country, whenever the orders in council, so far as they related to the United States, should be suspended. This offer England rejected, refusing to obtain a favour from America by a concession to France. The embargo was considered, by the ministry, as a municipal measure, affecting only the citizens of the United States ; nor did they pretend to make any complaint of it. But they took a very different view of the orders in council,—in their opinion, a right of retaliation, exercised against their enemies.

The difficulties and embarrassments of the country becoming every day greater, there appeared no alternative but an entire suspension of commerce with all the world, or war both with England and France. We shall extract a paragraph from a report made to the House of Representatives in November 1808 :

“ The aggressions of England and France, collectively affecting almost the whole of our commerce, and persisted in, notwithstanding repeated remonstrances, explanations and propositions the most candid and unexceptionable, are, to all intents and purposes, a maritime war waged by both nations against the United States. It cannot be denied, that the *ultimate and only effectual mode of resisting that warfare*, if persisted in, is *war*. A permanent suspension of commerce, after repeated and unavailing efforts to obtain peace, would not properly be resistance,—it would be withdrawing from the contest, and *abandoning our indisputable right freely to navigate the ocean*. The present unsettled state of the world, the extraordinary situation in which the United States are placed, and the necessity, if war be resorted to, of making it at the same time against both nations, and these the two most powerful of the world, are the principal causes of hesitation. There would be none in resorting to that remedy, however calamitous, if a selection could be made on

any principle of justice, or without a sacrifice of national independence."

This gloomy prospect was for a moment relieved by a circumstance, hailed as most auspicious in the outset, but which ultimately added to the accumulation of difficulties and provocations. We now refer to the negotiation, completed in April 1809 by Mr. Erskine,\* an arrangement that suspended, for a short time, the appearance and necessity of war. The proposition made by that minister, that the orders in council, of January and November 1807, should be withdrawn, on the 10th day of June, as far as respected the United States, provided the intercourse should be renewed between America and England, was received with great satisfaction by this government. An immediate answer was made by the Secretary of State, that the President would, in pursuance of the 11th section of the statute, commonly called the nonintercourse act, issue a proclamation, so that the trade of the United States with Great Britain might on the same day be renewed, in the manner provided in that act. Accordingly, on the very day (April 19) on which this note was written, the following proclamation was officially published :

"By the President of the United States, a proclamation. Whereas it is provided by the 11th section of the act of Congress, entitled "an act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes," that, "in case either France or Great Britain shall so revoke or modify her edicts, as that they shall cease to violate the neutral commerce of the United States," the President is authorized to declare the same by proclamation, after which the trade suspended by the said act, and by an act laying an embargo on all ships and vessels in the ports and harbours of the United States, and the several acts supplementary thereto, may be renewed with the nation so doing. And whereas,

\* Mr. Rose and Mr. David M. Erskine, were envoys extraordinary and ministers plenipotentiary. Mr. Rose left this country in March 1808.

the honourable David Montague Erskine, his Britannic majesty's envoy extraordinary and minister plenipotentiary, has, by the order and in the name of his sovereign, declared to this government, that the British orders in council, of January and November 1807, will have been withdrawn, as respects the United States, on the 10th day of June next—Now, therefore, I, James Madison, President of the United States, do hereby proclaim, that the orders in council, aforesaid, will have been withdrawn on the said tenth day of June next, after which day, the trade of the United States with Great Britain, as suspended by the act of Congress above mentioned, and an act laying an embargo on all ships and vessels in the ports and harbours of the United States, and the several acts supplementary thereto, may be renewed."

Mr. Erskine having likewise offered reparation for the affair of the Chesapeake, the proposition was accepted by the American government; and he declared, at the same time, that a minister, possessing full powers, would be sent to this country, to conclude a treaty on all the points in discussion. But the satisfaction, the arrangement of the 19th diffused, was soon dispelled, for on the 3d of July of the same year, the British minister gave official notice to the Secretary of State, that his government had not thought proper to confirm the provisional agreement he had entered into. It was well known, at the time, that the motive of this refusal of the ministry was the circumstance of the envoy's having exceeded his instructions. In consequence of this communication, the President issued a second proclamation of August 9, 1809, declaring that the nonintercourse act was again in force, in regard to Great Britain. The British government also issued orders to protect from capture such American vessels as had left the United States in consequence of the original proclamation of the President.

This was an unfortunate business;—justly a disappointment to the American government and people, exceedingly increasing the probability of war. We believe that no doubt now remains, but that it would have been for the benefit of Great Britain to have confirmed the arrangement of April, 1809,—or what was, in reality, equivalent to it, the propo-



sition of the American government, of the preceding summer. England would not accede to either, on the ground, that such a state of things would amount to a virtual repeal of her orders. Mr. Erskine certainly exceeded his instructions, as he admits himself, in his letters to Mr. Canning ;— he attempts no justification of his conduct, in relation to the two conditions of his instructions, concerning the colonial trade, and the enforcing the embargo against France, by the means of English men of war, though he offers satisfactory explanations upon some minor points.\* He closes a letter,

\* These instructions of Mr. Canning, from a letter to Mr. Erskine, of January 23, 1809, not only contain two extraordinary propositions, but as they constitute a principal ingredient in the correspondence between Mr. Jackson and Mr. Smith, we shall extract them entire. "From the reports of your conversations with Mr. Madison, Mr. Smith, and Mr. Gallatin, it appears, 1st, that the American government is prepared, in the event of his majesty's consenting to withdraw the orders in council, of January and November 1807, to withdraw, coterminously, on its part, the interdiction of its harbours to ships of war, and all nonintercourse and nonimportation acts, so far as respects Great Britain, leaving them in force with respect to France, and the powers which adopt or act under her decrees. 2dly, what is of the utmost importance, as precluding a new source of misunderstanding, which might arise after the adjustment of the other questions, that America is willing to renounce, during the present war, the pretension of carrying on, in time of war, all trade with the enemies' colonies, from which she was excluded during peace. 3dly, Great Britain, for the purpose of securing the operation of the embargo, and of the bona fide intention of America to prevent her citizens from trading with France, and the powers adopting and acting under the French decrees, is to be considered as being at liberty to capture all such American vessels as may be found attempting to trade with the ports of any of those powers; without which security for the observance of the embargo, the raising of it nominally, with respect to Great Britain alone, would in fact raise it with respect to all the world. On these conditions, his majesty would consent to withdraw the orders in council, of January and November 1807, so far as respects America."—"Upon receiving through you, on the part of the American government, a distinct and official recognition of the three above mentioned conditions, his majesty will lose no time in sending to America a minister, fully empow-

dated August 10, the last he appears to have written, with this expression :—" Nothing could have induced me to have deviated, in the slightest degree, from the orders I had received, but a thorough conviction upon my mind, that by so doing, to a certain extent, I should accomplish the object which his majesty had in view, when, by too strictly adhering to the letter of my instructions, I might lose the opportunity of promoting essentially his majesty's wishes and interest." The instructions to this minister, and the entire correspondence, have since been published.

In the arrangement made with Mr. Erskine, the American government relinquished the ground, taken immediately after the capture of the Chesapeake, that they would not treat of that affair, except in connexion with the business of impressment. The government, also, expressed no dissatisfaction, that the officer, admiral Berkeley, had not only been recalled, but had recently been appointed to a high command at Lisbon. Nor could America have been satisfied with the partial explanation, given by Mr. secretary Canning to Mr. Pinkney, of the reasons of the disavowal of the Erskine arrangement; particularly as the secretary intimated, that the minister then in America would be furnished with instructions on this subject. Propriety obviously required, the explanation should be given on the spot; and, as the confidence of his government had been withdrawn from the individual who framed the provisional convention, he was an unsuitable person for that purpose. These instructions were never executed by him;—a duty that naturally, and with great fitness, fell upon

ered to consign them to a formal and regular treaty."—" Upon the receipt here of an official note, containing an engagement for the adoption, by the American government, of the three conditions above specified, his majesty will be prepared, on the faith of such engagement, either immediately, (if the repeal shall have been immediate in America) or on any day specified by the American government for that repeal, reciprocally to recall the orders in council, without waiting for the conclusion of a treaty. And you are authorized, in the circumstances herein described, to take such reciprocal engagement on his majesty's behalf." Par. Hist. vol. xvii. Append. 124, 125, 126.

his successor. It is, however, proper to state, that Mr. Erskine was not invested with full power to make a treaty; and he had never exchanged his powers with any persons properly authorized; on the part of the American government. When the convention was made, he stood in the light only of an accredited minister. In a recent instance, our government withheld their sanction from a treaty, concluded by envoys invested with full powers, and especially accredited for that purpose. The ratification was refused, in that case, without the customary form of submitting it to that body, invested, under the constitution, with the examination of treaties. It is, indeed, evident, from an expression, in Mr. Erskine's letter, of April 18th, that he himself did not possess a full power. It is as follows :—"On these grounds and expectations, I am instructed to communicate to the American government, his majesty's determination of sending to the United States an envoy extraordinary, invested with full powers to conclude a treaty on all the points of the relations between the two countries." At that time, Mr. Erskine was authorized to bind his government, only on the *three* conditions of his instructions; he was, moreover, authorized to assure the American government, that if they wished to act upon the arrangement, before a formal treaty could be made, full and immediate effect should be given to it in England.

The next negotiation presents us with still greater circumstances of irritation, though of a novel character; it began in anger, and was speedily terminated. Francis J. Jackson, the successor of Mr. Erskine, who had been recalled, arrived in the autumn of 1809, in this country. Having presented his credential letters, he had two conferences with the Secretary of State; but verbal communication did not extend beyond that point. On the 9th of October, the Secretary addressed him a note, complaining that no distinct or solid reasons had been given for the disavowal of the Erskine arrangement, with the additional remark that the government was entitled to receive not only a formal disavowal from a public functionary on the spot, but the acknowledged principles of the laws of nations (Vattel) required, that the reasons should be

"solid and weighty." The case was an extraordinary one : in the usual conventions, made between nations, no part of them were, in general, subject to be executed, till ratified by the respective governments. But the arrangement of 1809 was carried, by the American government, into immediate execution ; and the merchants, relying upon the good faith with which it was concluded, sent their vessels to sea, as soon as the time, fixed by the proclamation of the President, would allow. The letter concluded with the following expression :—" To avoid the misconceptions, incident to oral proceedings, I have the honour to intimate, that it is thought expedient, that our further discussions, on the present occasion, be in the written form." An answer was written to this letter, on the 11th, by Mr. Jackson :

" I have had the honour of receiving your official letter of the 9th inst. towards the close of which you inform me, that it has been thought expedient to put an end to all verbal communication, between yourself and me, in discussing the important objects of my mission. Considering that a very few days have elapsed, since I delivered to the President a credential letter from the king, my master—and that nothing has been even alleged to have occurred, to deprive me of the facility of access, and of the credit to which, according to immemorial usage, I am by that letter entitled, I believe there does not exist, in the annals of diplomacy, a precedent for such a determination, between two ministers, who have met for the avowed purpose of terminating amicably the existing differences between their respective countries ; but, after mature reflection, I am induced to acquiesce in it, by recollection of the time that must necessarily elapse, before I can receive his majesty's commands upon so unexpected an occurrence, and of the detriment that would ensue to the public service, if my ministerial functions were, in the interval, to be altogether suspended. I shall, therefore, content myself with entering my protest against a proceeding, which I can consider in no other light, than as a violation, in my person, of the most essential rights of a public minister, when adopted, as in the present case, without any alleged misconduct on his part."

This declaration was, perhaps, hasty ; and the opinion, here expressed, will, on examination, be found to be incorrect. Two discussions had been held, and such progress made in the topic, as to render a precise statement necessary, in order that the views and propositions of the respective parties might be exactly understood,—a proceeding not unusual in diplomacy. A very recent instance took place in the negotiation, in 1808, between Mr. Pinkney and Mr. Canning. The late diplomatic intercourse between the two governments rendered such a precaution abundantly necessary, various and important misconceptions having arisen from neglect of this mode of proceeding. The instructions, sent by Mr. Canning to Mr. Erskine, originated entirely in a misunderstanding on the part of the latter gentleman of the sentiments expressed in conversation with members\* of the government. Mr. Jackson was, also, somewhat incorrect in the construction he put on the intimation of the American secretary ; the language not admitting of a meaning, so broad and comprehensive. It was apparently intended, that the restriction to written communication should apply only to the particular discussions then in hand ;—by no means to a denial of all verbal intercourse whatever. Mr. Jackson was satisfied with an explanation of this matter, subsequently given.

The correspondence between the American secretary of state and the British minister began under these and other unfavourable auspices ; it had a speedy and unfortunate termination. Omitting other matters, that led to some angry remarks, we shall proceed at once to the particular topic, that immediately brought about the dismissal of Mr. Jackson. It turned upon the point, *whether the whole of Mr. Erskine's instructions were known to the American government.* We shall begin with an extract from Mr. Jackson's letter of October 11, where this subject is first mentioned :

“ It was not known, when I left England, whether Mr. Erskine had, according to the liberty allowed him, communicated to you in extenso his original instructions. It now appears that he did not.

\* Messrs. Gallatin, Smith and Madison.

But in reverting to his official correspondence and particularly to a despatch addressed on the 20th of April to his majesty's secretary of state for foreign affairs, I find that he there states, that he had submitted to your consideration the three conditions, specified in those instructions as the ground work of an arrangement, which, according to information received from this country, it was thought in England might be made with a prospect of great mutual advantage. Mr. Erskine there reports *verbatim et seriatim* your observations upon each of the three conditions, and the reasons, which induced you to think, that others might be substituted in lieu of them. It may have been concluded between you, that these latter were an equivalent for the original conditions, but the very act of substitution evidently shows, that those original conditions were in fact very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions, and those contained in the arrangement of the 18th and 19th of April, is sufficiently obvious to require no elucidation, nor need I draw the conclusion, which I consider as admitted by all absence of complaint on the part of the American government; viz., that under such circumstances his majesty had an undoubted and incontrovertible right to disavow the act of his minister. I must here allude to a supposition, which you have more than once mentioned to me, and by which, if it had any the slightest foundation, this right might perhaps have been in some degree affected. You have informed me that you understood that Mr. Erskine had two sets of instructions by which to regulate his conduct, and that upon one of them, which had not been communicated either to you or to the public, was to be rested the justification of the terms finally agreed upon between you and him. It is my duty, sir, solemnly to declare to you, and through you to the President, that the despatch from Mr. Canning to Mr. Erskine, which you have made the basis of an official correspondence with the latter minister, and which was read by the former to the American minister in London, is the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement with this country on the matter to which it relates."

This paragraph plainly intimates that the American government were acquainted with Mr. Erskine's instructions.

They, therefore, must have known that the convention was contrary to those instructions ; and it cannot and ought not to be matter of surprise, that the convention was disavowed, a conclusion strengthened, in the opinion of the English envoy, by the absence of all complaint on the part of America. But the extract ends with a qualifying phrase, inconsistent in its meaning with the leading feature of the paragraph. If Mr. Erskine had, in the belief of the American government, other instructions than those he communicated to the American secretary, it is quite obvious, the American government could not positively have known that the convention, concluded, was at variance with his instructions. If an envoy has several sets of instructions, if he exhibits only one set to the minister, with whom he treats, and after that makes a treaty at variance with the instructions exhibited, particularly of the simple and precise character of those, shown by Mr. Erskine, the impression on the minister's mind probably would be, that he had not seen all the instructions of the envoy. In the letter of October 19th of the secretary of state will be found a particular answer to the quotation already made from Mr. Jackson's letter of the 11th :

"The stress you have laid on what you have been pleased to state, as the substitution of the terms finally agreed on, for the terms first proposed, has excited no small degree of surprise. Certain it is, that your predecessor did present for my consideration the three conditions, which now appear in the printed document—that he was disposed to urge them more than the nature of two of them (both palpably inadmissible and one more than merely inadmissible) could permit, and that, on finding his first proposal unsuccessful, the more reasonable terms, comprised in the arrangement respecting the orders in council, were adopted."—"The declaration that the despatch from Mr. Canning to Mr. Erskine of the 23d January, is the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it relates," is now for the first time made to this government, and I need hardly add, that if that despatch had been communicated at the time of the arrangement, or if it had been known, that the propositions contained in it, and

which were at first presented by Mr. Erskine; were the only ones on which he was authorized to make an arrangement, the arrangement would not have been made."

In this extract the secretary distinctly states, that Mr. Jackson's letter furnished the government with the first information, that Mr. Canning's despatch of the 23d of January contained the conditions upon which a treaty *alone* could be concluded; a positive declaration, that the American government did not know before that Mr. Erskine did not possess other instructions, than those shown to the secretary; and if the government had possessed that knowledge, the convention never would have been made. It is important to mark this expression, because here the controversy on that particular point could well have terminated; neither party was under any obligation to return to it. The language of these letters, both of secretary and minister, had not been particularly mild or conciliatory. They both obviously wrote under some degree of irritation. But no permanent offence had been given, Mr. Jackson having declared, he was satisfied with the explanation offered by Mr. Smith respecting the form of intercourse. Mr. Jackson's answer, under date of October 23d, is in the following words:

"I have, therefore, no hesitation in informing you, that his majesty was pleased to disavow the agreement concluded between you and Mr. Erskine, because it was concluded in violation of that gentleman's instructions, and altogether without authority to subscribe to the terms of it. These instructions, I now understand by your letter, as well as from the obvious deduction, which I took the liberty of making in mine of the 11th instant, were at the time in substance made known to you; no stronger illustration, therefore, can be given of the deviation from them which occurred, than by a reference to the terms of your agreement. Nothing can be more notorious than the frequency with which, in the course of a complicated negotiation, ministers are furnished with a gradation of conditions, on which they may be successively authorized to conclude. So common is the case, which you put hypothetically, that in acceding to the justice of your statement, I feel myself impelled to make only one observation upon it, which



is, that it does not strike me as bearing upon the consideration of the unauthorized agreement concluded here, inasmuch as, in point of fact, Mr. Erskine had no such graduated instructions. You are already acquainted with that which was given, and I have had the honour of informing you, that it was the only one, by which the conditions on which he was to conclude, were prescribed. So far from the terms, which he was actually induced to accept, having been contemplated in that instruction, he himself states, that they were substituted in lieu of those originally proposed."

This language may bear a double construction, though the presumption undoubtedly is, that a foreign minister would not attempt to insult a government, to which he was accredited, in the gross manner that one form of interpretation would imply. If Mr. Jackson intended only to say, that the convention was disavowed, because it was in violation of Mr. Erskine's instructions, that, as he had now ascertained those instructions were known to the American government, and as he had himself informed them, that those were the only instructions Mr. Erskine possessed, the American government could not have been surprised the convention was disavowed, assuredly no cause of objection or exception could justly lie to this language. There is manifestly no intimation in this construction, that the American government knew at the time of the convention *all* the instructions of Mr. Erskine, and the government always admitted that they had seen a *part* of his instructions. The other interpretation of this language, and the one the government obviously assigned to it, is, that the American government did know at the time of the convention, that the instructions exhibited by Mr. Erskine were the *only ones* he possessed. Whatever construction may be affixed to this language, the remark is just, that to renew the intimation, was, on the part of the foreign envoy, a gratuitous proceeding. Owing to indisposition, the Secretary of State did not reply to this letter before the 1st of November. He observes:

"I abstain, sir, from making any particular animadversions on several irrelevant and improper allusions in your letter, not all comporting with the professed disposition to adjust, in an amicable

manner, the differences unhappily subsisting between the two countries. But it would be improper to conclude the few observations, to which I purposely limit myself, without adverting to your repetition of a language, implying a knowledge on the part of this government, that the instructions of your predecessor did not authorize the arrangement formed by him. After the explicit and peremptory asseveration, that this government had no such knowledge, no such arrangement would have been entered into, the view which you have again presented of the subject, makes it my duty to apprise you that such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes to itself."

Whatever character may be ascribed to this language, it put it in the power of Mr. Jackson to explain that portion of his letter, at which the American secretary had taken offence. The secretary himself, in the course of their short correspondence, had already offered an explanation upon another topic that appeared to be peculiarly irritating to the minister. Mr. Jackson was, evidently, a man of talents; his correspondence is conducted with ability; certainly with more power of argument and expression than that of any of his predecessors; he had been employed many years in the diplomatic service of his country; and was, therefore, in every respect, competent to judge of the meaning Mr. Smith had ascribed to his language. It was quite apparent, that a direct attack by a foreign functionary upon the honour and veracity of a government was, under all circumstances, inadmissible. After Mr. Smith had undertaken to interpret, on his part, the language of Mr. Jackson, and to attribute to it a meaning, that every diplomatic agent must know was exceedingly offensive, there was presented to the latter gentleman the alternative, either of confirming or rejecting the construction of the American secretary. On the other hand, Mr. Jackson obviously did not consider, that he was under any obligation to offer an explanation of his own language. The government, with whom he was sent to treat, had undertaken to interpret the phrases and sentences of his letters, and the accuracy of their constructions not only rested in

their discretion, but he, in justice, could only be made answerable for his own expressions, and not for the interpretation of others. This appears to have been the view the British minister took of this unfortunate business ; and with these impressions he replied to the letter of Mr. Smith. We subjoin an extract from Mr. Jackson's answer of November 4th :

“ I am concerned, sir, to be obliged a second time to appeal to those principles of public law, under the sanction and protection of which I was sent to this country. Where there is not freedom of communication in the form substituted for the more usual one of verbal discussion, there can be little useful intercourse between ministers ; and one, at least, of the epithets, which you have thought proper to apply to my last letter, is such as necessarily abridges that freedom. That any thing therein contained, may be irrelevant to the subject, it is of course competent in you to endeavour to show, and, as far as you succeed in so doing, in so far will my argument lose of its validity ; but as to the propriety of my allusions, you must allow me to acknowledge only the decision of my own sovereign, whose commands I obey, and to whom, alone, I can consider myself responsible. Beyond this, it suffices that I do not deviate from the respect due to the government, to which I am accredited.

“ You will find that in my correspondence with you, I have carefully avoided drawing conclusions that did not necessarily follow from the premises advanced by me, and, last of all, should I think of uttering an insinuation where I was unable to substantiate a fact. To facts, such as I have become acquainted with them, I have scrupulously adhered, and in so doing, I must continue, wherever the good faith of his Majesty's government is called in question, to vindicate its honour and dignity, in the manner that appears to me the best calculated for that purpose.”

On the 8th of November, the following letter was sent to Mr. Jackson, from the Department of State :

“ In my letter of the 19th ult. I stated to you, that the declaration in your letter of the 11th, that the despatch from Mr. Canning to Mr. Erskine of the 23d January, was the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion

of an arrangement on the matter to which it related, was then for the first time made to this government; and it was added, that if that despatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it, were the only ones on which he was authorized to make an arrangement, the arrangement would not have been made.

“ In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ultimo, of a language implying a knowledge of this government that the instructions of your predecessor did not authorize the arrangement formed by him, an intimation was distinctly given to you, that after the explicit and peremptory asseveration that this government had not any knowledge, and that with such a knowledge, such an arrangement would not have been made, no such insinuation could be admitted by this government.

“ Finding that in your reply of the 4th instant, you have used a language, which cannot be understood, but as reiterating and even aggravating the same gross insinuation, it only remains, in order to preclude opportunities, which are thus abused, to inform you that no further communications will be received from you, and that the necessity of this determination will, without delay, be made known to your government. In the mean time, a ready attention will be given to any communications affecting the interests of the two nations through any other channel that may be substituted.”

Mr. Jackson immediately withdrew with every member of his mission from Washington; he made New-York the place of his residence. The Secretary of Legation was desired, by the British minister, to give notice of that circumstance to the Department of State. The government, without delay, requested the recall of Mr. Jackson. And on the 14th of March 1810, Mr. Pinkney, the American minister in London (whose commission had been renewed in February 1808), received notice that Mr. Jackson had been directed to return to England, but his recall was not accompanied with any mark of the displeasure of his own government. We have not thought it proper to pass over in entire silence the recall of Mr. Jackson, though the extracting a portion of the correspondence has exceeded the limits, we have in most cases prescribed for ourselves. Being the second instance

of a minister having been withdrawn, at the request of the government, since the constitution, and, on some other accounts, an important point in the diplomatic history of the period, we have endeavoured to present, in as brief a manner as the subject would admit, and without entering into a protracted discussion, a complete view and illustration of this whole transaction. Separate from the uncommon feeling it awakened at the time, it was attended with the serious and lamentable consequence of an interruption of an important negotiation.

Thus a second negotiation was broken off. Eighteen months had passed, and no reparation whatever had been made for the affair of the Chesapeake. The country was plunging deeper and deeper into the disputes of the belligerents; and the prospect every day diminished, that it would be able peaceably to rescue itself with honour from the embarrassments of the occasion. England at this time manifested a great degree of indifference concerning her relations with America,\* and probably not apprehending a war, she

\* We shall here conclude the series of British orders and instructions.

Jan. 8th. 1808. Carthagen, Cadiz, St. Lucar and intermediate ports declared in blockade.

March 28th. 1808. Duties fixed by act of Parliament on all merchandise exported from Great Britain under regulations of orders in council of November 11 and 27.

April 11th. 1808. Public and private armed vessels directed not to interrupt neutrals bound to British "islands, colonies, or settlements, in the West Indies or South America, to whomsoever property may appear to belong, and notwithstanding such vessel may not have regular clearances and documents on board."

April 14th. 1808. Exportation of cotton wool to foreign places prohibited till end of next session of Parliament. Provisions of late orders in council confirmed.

May 4th. 1808. Island of Zealand declared in blockade.

June 23d. 1808. American and British vessels permitted, by act of Parliament, to bring to British ports, directly from America, merchandise of American growth or manufacture, "subject to such duties only as were payable on the like commodities imported from other countries."

October

had doubtless resolved, that no negotiation should induce her to make a change in her foreign policy. The information, that the recall of Mr. Jackson had been requested, was received with perfect coolness, and in giving notice that his return would be directed, Lord Wellesley indulged in no complaint. On the contrary, he signified with great courtesy his concern that the diplomatic intercourse of the two countries had been, for a moment, interrupted.

We consider the affair of Mr. Jackson altogether as a personal one. He had no instructions to enter into the business of Mr. Erskine's convention, nor various other retrospective affairs into which the warmth of discussion led the two ministers. The circumstance, that brought about the immediate and unfortunate termination of his mission, was not at all of an official nature. At any rate, this event did not cause the slightest change in the diplomatic relations of the two governments. Mr. Pinkney remained in England as the envoy of this country, and in July 1810, Lord Wellesley informed that gentleman, it was his intention to recommend the appointment of an envoy extraordinary and minister plenipotentiary to the United States. Still, some dissatisfaction was expressed in the beginning of the same year, that the business of the nation was left in the hands of a chargé in the United States, and Mr. Pinkney was directed to take a corresponding step, as it respected the affairs of his own country. In order, however, not to interrupt the narration, we shall state here, that no minister having been appointed, notwithstanding the repeated assurances of Lord Wellesley, as late as January 1811, Mr. Pinkney, by the direction of his government, requested an audience of leave. He appointed Mr. Smith chargé d'affaires. The American government was still desirous of an arrangement with England, and as early as January 1810, a few months after the affair of Mr. Jackson, Mr. Pinkney was instructed to renew, under

October 14th. 1808. French leeward Carribean islands declared in blockade.

April 26th. 1809. Holland declared in blockade.

May 24th. 1809. This blockade suspended for a time on account of Erskine arrangement.

the original commission of May 1806, a negotiation "relating to wrongs committed between the parties on the high seas or other waters, and for establishing the principles of navigation and commerce between them." This attempt was also ineffectual.

We have now arrived at another perplexing and irritating discussion, the last of that unprofitable series, that preceded the war; we refer to the controversy respecting the repeal of the Berlin and Milan decrees. The act of March 1809, and of May 1810, gave the President power to suspend by proclamation the operation of the embargo, of the nonimportation and of the nonintercourse laws in relation to that power, who should repeal such parts of her maritime decrees, as affected the rights of neutral powers. We have already remarked, that in June 1809, the President, in consequence of declarations made to this government by Mr. Erskine, gave notice, in the manner prescribed by the act, that the trade was open to a renewal with Great Britain.\* On the 5th of August 1810, a few months after the passing the act above mentioned, the French minister of Foreign Affairs, M. de Champagny, duke of Cadore, addressed a letter to the American minister in Paris, which has already been quoted in the chapter on the continental system. This was a conditional repeal of the Berlin and Milan decrees in a two fold sense; one condition applied to Great Britain, and the other to the United States. The last is one the United States herself proposed to the belligerents. At the time of Mr. Erskine's arrangement, she had virtually, and in substance, taken the same position in regard to England that France, now upon her own original declaration, proposed to her to assume. The condition, concerning the United States, is clearly, that they shall cause their rights to be respected, not in any manner France herself might intimate, but in the manner the United States themselves had proposed, a form of proceeding that applied equally to both belligerents. The proposition on the part of the French government was fair and legitimate;—merely accepting the condition offered by

\* See section 4 of act of May 1810.

America. The same condition had been accepted in the year 1809, by Mr. Erskine as envoy of Great Britain. The act of the French government announced in M. de Champagny's letter of August 1810, was met with instant good faith by the President ; and a proclamation issued on the 2d November, giving notice that all the restrictions, imposed by the act of the first of May 1810, in regard to France and her dependencies, were discontinued from the date of the instrument. On the other hand, the declaration of the French government was explicit and direct, viz. :—" after the first day of November 1810, they (the decrees of Berlin and Milan) will cease to have effect." And the condition exacted on the part of the United States was, that they should cause certain sections of the nonintercourse laws of March 1809, to be enforced against Great Britain. As this edict of the French government was founded on the law of May 1810, the contract became complete between the belligerent thus revoking, and the United States. And in the " unexpected and improbable emergency" that Great Britain did not rescind her orders in council, the nonimportation act would be enforced against that country. The President declared in his proclamation of November 2d, that the act would be enforced. This circumstance should have satisfied the French government. Still, we find instructions given to the President of the Council of Prizes on the 25th of December of the same year, after the President's proclamation was known in France, to which indeed, a reference is made in the document itself, to suspend all causes that might arise under the decrees after November 1st, till the 2d of February 1811, in order to ascertain whether the law of May 1810, and the proclamation of November of the same year, would be enforced. If this was done, the captures should be declared void, and the vessels and cargoes delivered to their owners. The French government did not furnish the American with the evidence of any decree relating to the revocation, and the declaration of M. de Champagny of August 5th, was afterwards clogged and embarrassed by the report of the French Minister of Foreign Affairs, and the letter of the Minister of Justice.



A representation of the declaration of M. de Champagny was made without delay to Great Britain, accompanied with the assurances of all the diplomatic agents of the United States in France,\* that no condemnations had taken place since the revocation, and a repeal of her orders was claimed on the ground, that they were only retaliatory. As a neutral nation, it could not signify to America what conditions France exacted from England; and on this particular occasion, America did not join with France, or any other nation in calling upon England to renounce her maritime principles. She invited that country to repeal orders, passed in retaliation of decrees, that France declared no longer to exist. But England resisted this application on the ground, that she was furnished with no evidence, the decrees had been rescinded; that the decree, affecting the repeal, had never been promulgated, that vessels were still captured and condemned under them; that she was not bound to be satisfied with the evidence that had satisfied a neutral power, and that conditions were exacted, which never could be complied with. It, certainly, is true, that no evidence of any decree could be found, nor was any decree promulgated till long after this period, but if Great Britain placed no reliance on the positive and direct declaration of the French Minister of Foreign Relations, no great value could have been attached to a decree.

We have already said that Mr. Pinkney left England in the beginning of the year 1811. In February of the same year, A. J. Foster was appointed envoy to this country. He accomplished nothing.† He was the last minister sent before the war, and remained till it was declared. In Novem-

\* Barlow's Letter of March 2d, 1812.

Russell's do.

Russell's affidavit—Appendix. Arguments on the Snipe, p. 386, and following.

† Mr. Foster protested against the possession of that portion of West Florida between the Perdido and the Mississippi in October 1810, but the American government refused to enter into a discussion on the subject, as that territory was the undoubted property of the United States.

ber 1811, the government, however, accepted the terms proposed by Mr. Erskine in 1809, for the reparation of the wrongs done by the attack on the Chesapeake. They were in substance as follows :

1. That the British government disavowed the act of Admiral Berkeley.

2. Agreed to restore the men taken from the Chesapeake to such place as the American government should name.

3. A suitable pecuniary compensation to the families of the men killed in action and of the wounded.

In May 1811, and at other times, till the 29th of July 1812, judgment was pronounced by Sir Wm. Scott, in the High Court of Admiralty, on the *Fox*, the *Snipe*, the *Martha*, the *Vesta*, and other American vessels, detained under the orders in council and brought to adjudication. These vessels were all condemned. It is not necessary to recapitulate the causes of this act. The Court allowed full weight to the argument that the orders in council were retaliatory measures,\* but as no decree had been passed or promulgated repealing the French decrees, the time had not arrived when that argument could be applied with the force that undoubtedly belonged to it. On the other hand it was remarked, that the fact of the repeal was notified to the American minister in Paris by the Minister of Foreign Affairs, and that the notification was published in the *Moniteur*, the official French paper, four days after the communication made to General Armstrong.

In April 1812, the British government published a "declaration" on the orders in council. This state paper enters into a brief history of the events that led to the orders, and explains the terms upon which they would be repealed. The

\* Argument on the *Snipe*.—"For retaliatory orders they are, they are so declared in their own language, and in the uniform language of the Government which has established them. I have no hesitation in saying that they would cease to be just if they ceased to be retaliatory, and they would cease to be retaliatory from the moment the enemy retracts in a sincere manner his measure, on which they were intended to retaliate."

following extract will show the sense they entertained, after a lapse of eighteen months of the proceedings of the imperial government, and of the representations of the American diplomatic agent concerning the French decrees :—" That if at any time hereafter the Berlin and Milan decrees shall by some authentic act of the French government, publicly promulgated, be expressly and unconditionally repealed, then and from thenceforth the order in council of the 7th day of January 1807, and the order in council of the 26th day of April 1809, shall without any further order be, and the same, hereby, are declared from thenceforth to be wholly and absolutely revoked." The decisions of the High Court of Admiralty and the declaration of April 1812, could leave no doubt of the construction put by the British government on the note of M. de Champagny. England did not consider the French decrees repealed. The nonimportation act had now been in operation more than a year, and there was no probability that the form of revocation pointed out in the state paper of April 1812, would take place. In this situation, the United States had two alternatives presented to its consideration, either of continuing that act in force, or of proceeding to a war with Great Britain. The government adopted the latter measure. War, having been preceded by an embargo of 90 days, was declared on the 18th of June of the same year. The American government, doubtless, supposed it offered all the evidence it ever could possess, that the French decrees were repealed ;—it never could have anticipated the extraordinary document of April 28th, 1811 ; communicated to its minister in Paris more than a year after it purported to have been passed ; a decree not known in this country at the time the war was declared. Having already made some remarks on this instrument in a previous chapter, it is only necessary, in this place, to observe that the decree was communicated to the British ministry on the 20th of May 1812, and on the 23d of June the same year an order was issued, repealing the orders in council.

The history of the war does not belong to the subject of this work. We shall, however, be permitted to remark, that

many unfortunate circumstances accompanied the time and manner of its declaration, as well as the opening of the contest, which the spirit and gallantry of the people, in its progress and towards its close, well redeemed. Neutrality was so obviously the policy of the country, and the form of government seemed so ill adapted to a state of hostilities, that we cannot be surprised if every other expedient was first tried and exhausted. But the doctrine of neutrality, the ark of safety and prosperity to this people, a doctrine, that, in most cases, cannot be too highly commended, or too exactly maintained, was carried to an extreme degree of toleration; the restrictive system was not a successful one—it produced no effect on the belligerents. The country was wasting and perishing under it, and the passions of the political parties were inflamed to a dangerous degree. It would, perhaps, have been better that a war should have been declared in 1808, at the time of the report of a committee of the House of Representatives, already mentioned, on the foreign relations of the Republic. It would, we admit, have been an unusual thing to have declared war against two nations, at war with each other, but both were then actually engaged in hostilities with America; and, owing to the particular condition of one of them, a war with England appeared to be virtually a war with both. It should be recollected, too, that about that period, began the severest operation of the French decrees, the British orders, and of our own restrictive system. After 1808, to the restoration of peace in 1815, the commerce of the country was of comparatively trifling value; and in the language of the report of November, America had been compelled by the belligerents to abandon her right of freely navigating the ocean. A determined opposition was made to the war with England, but we believe that much, if not the greater part of it, arose from an apprehension it would lead to an alliance with France. It was extremely natural that this apprehension should be felt by one of the political parties, because an alleged preference for the measures of one of the belligerents, was the principal cause of opposition to the measures of our own government. The war was declared at a

time when the French emperor was in the height, not only of his power, but of his prosperity ; his armies had all passed the Vistula, in a rapid and victorious march for the capital of Russia, and he, himself, was in Poland employed in organizing that kingdom into a new confederation, of which he was to be the protector. But the correspondence of America with France at this period, and the unsatisfactory condition of the claims of the one government upon the other, clearly show, that no event was less likely to take place than an alliance between the two countries. We have, already, in the chapter on the continental system, presented an outline of the proceedings of the United States with France, just before and during the war of 1812, though it seems hardly necessary to remark, that the whole course of policy of this government from its foundation in 1789, nay, from the first year after the peace of '83,\* has been most sedulously to avoid every possible approach to alliances or connexions with the European nations. America, fortunately exonerated from the obligations of the treaty of '78, reaped, at an early hour, the full measure of all the experience that the pernicious consequences, with which she was threatened on that occasion, could give her.

Early in eighteen hundred and thirteen, the emperor of Russia offered his mediation to procure a cessation of hostilities between England and the United States. Russia, having made a treaty of peace and alliance with England, in the summer of eighteen hundred and twelve, the commerce of the northern nations of Europe appeared to be restored to its former extent and vigour ; that event freed it from the restraints to which it was subject, in consequence of the hostile acts of England ; but the American war having renewed this state of embarrassment, the northern nations were again deprived of the whole of the valuable commerce of the United States. America accepted the mediation, and commissioners were named to proceed to Russia. England, however, did not consent to treat, either at St. Petersburg, or under the mediation of a third power ; but proposed to

\* See chapter on Russia.

meet the American envoys directly, in London, or at Gottenburg. It is immaterial, whether this negotiation was proposed at the suggestion of England, or was the voluntary act of Russia,—those two powers being at that time closely united. Some prejudice had been excited against the United States, at the court of St. Petersburg, by reports that the government was disposed to enter into a more intimate connexion with France. Not only the relations of the United States with Russia, were remarkably amicable, during the whole war with England, but they were in an unpromising and unsatisfactory state with the French emperor. We have before us a letter, written by the Secretary of State (Mr. Monroe), dated July 1, 1812, to the American minister in Russia (Mr. Adams), from which we make the following extract :—“ With France, our affairs, in many important circumstances, are still unsettled ; nor is there any certainty, that a satisfactory settlement of them will be obtained. Should it, however, be the case, it is not probable that it will produce any closer connexion between the United States and that power. It is not anticipated, that any event whatever will have that effect.”

The negotiation for peace with England was finally opened at Ghent, where the British commissioners, lord Gambier, Messrs. Henry Gouldburn and William Adams, arrived in August 1814 ; the American commissioners, Messrs. John Quincy Adams, Albert Gallatin and James A. Bayard, appointed April 17, 1813, and Henry Clay and Jonathan Russell, added to the commission January 18, 1814, being already assembled in that city. This negotiation terminated in a peace, concluded the 24th of December 1814.\* The treaty made no altera-

\* This treaty of peace and amity principally relates to boundaries. We shall extract a portion of it, omitting the details that relate to the expenses of commissioners, &c. :

“ **ART. 1.** There shall be a firm and universal peace between his Britannic majesty and the United States, and between their respective countries, territories, cities, towns and people, of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both par-

tion in the situation of the countries, for the terms, proposed by the commissioners of the respective nations, were mutu-

ties, as hereinafter mentioned. All territory, places and possessions whatsoever, taken by either party from the other, during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property. And all archives, records, deeds and papers, either of a public nature, or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the fourth article of this treaty. No disposition made by this treaty, as to such possession of the islands and territories claimed by both parties, shall, in any manner whatever, be construed to affect the right of either.

“ART. 2. Immediately after the ratifications of this treaty by both parties, as hereinafter mentioned, orders shall be sent to the armies, squadrons, officers, subjects and citizens of the two powers, to cease from all hostilities: and, to prevent all causes of complaint which might arise on account of the prizes which may be taken at sea after the said ratifications of this treaty, it is reciprocally agreed, that all vessels and effects which may be taken after the space of twelve days from the said ratifications, upon all parts of the coast of North America, from the latitude of twenty-three degrees north, to the latitude of fifty degrees north, and as far eastward in the Atlantic ocean as the thirty-sixth degree of west longitude from the meridian of Greenwich, shall be restored on each side: that the time shall be thirty days in all other parts of the Atlantic ocean, north of the equinoctial line or equator, and the same time for the British and Irish channels, for the gulf of Mexico, and all parts of the West Indies: forty days for the North Seas, for the Baltic and for all parts of the Mediterranean: sixty days for the Atlantic ocean south of the equator, as far as the latitude of the Cape of Good Hope: ninety days for every other part of the world south of the equator: and one hundred and twenty days for all other parts of the world, without exception.

ally rejected; the disputed points of maritime law, and the subject of commerce were reserved for a future discussion.

"ART. 3. All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the ratification of this treaty, as hereinafter mentioned, on their paying the debts which they may have contracted during their captivity. The two contracting parties respectively engage to discharge, in specie, the advances which may have been made by the other for the sustenance and maintenance of such prisoners.

"ART. 4. Whereas it was stipulated by the second article in the treaty of peace, of one thousand seven hundred and eighty-three, between his Britannic majesty and the United States of America, that the boundary of the United States should comprehend all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries, between Nova Scotia, on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic ocean, excepting such islands as now are, or heretofore have been, within the limits of Nova Scotia; and whereas the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Menan, in the said Bay of Fundy, are claimed by the United States, as being comprehended within their aforesaid boundaries, which said islands are claimed as belonging to his Britannic majesty, as having been at the time of, and previous to, the aforesaid treaty of one thousand seven hundred and eighty-three, within the limits of the province of Nova Scotia: in order, therefore, finally to decide upon these claims, it is agreed that they shall be referred to two commissioners, to be appointed in the following manner, viz: one commissioner shall be appointed by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners so appointed, shall be sworn *impartially to examine and decide upon the said claims, according to such evidence as shall be laid before them on the part of his Britannic Majesty and of the United States, respectively.* The said commissioners shall meet at St. Andrews, in the province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners shall, by a declaration or report, under their hands and seals, decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the said treaty of peace of one thousand seven hundred and eighty-



A general peace having been concluded in Europe, no objection existed to this course. An account of the negotiation

three. And if the said commissioners shall agree in their decision, both parties shall consider such decision as final and conclusive. It is further agreed, that in the event of the two commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said commissioners refusing, or declining, or wilfully omitting, to act as such, they shall make, jointly or separately, a report or reports, as well to the government of his Britannic majesty as to that of the United States, stating, in detail, the points on which they differ, and the grounds upon which their respective opinions have been formed, or the grounds upon which they, or either of them, have so refused, declined, or omitted to act. And his Britannic majesty, and the government of the United States, hereby agree to refer the report or reports of the said commissioners, to some friendly sovereign or state, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said report or reports, or upon the report of one commissioner, together with the grounds upon which the other commissioner shall have refused, declined, or omitted to act, as the case may be. And if the commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such friendly sovereign or state, together with the report of such other commissioner, then such sovereign or state shall decide, *ex parte*, upon the said report alone. And his Britannic majesty and the government of the United States engage to consider the decision of such friendly sovereign or state to be final and conclusive on all the matters so referred.

“ART. 5. Whereas neither that point of the highlands lying due north from the source of the river St. Croix, and designated, in the former treaty of peace between the two powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers which extends from the source of the river St. Croix directly north to the above mentioned north-west angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the north-westernmost head of Connecticut river; thence, down along the middle of that river, to the forty-fifth degree of north latitude; thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy, has not yet been surveyed; it is agreed, that for these se-

of Ghent\* having been published in 1822, we take this opportunity to refer to it for a history of the proceedings of that mission.

veral purposes, two commissioners shall be appointed, sworn and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article.

“ART. 6. Whereas, by the former treaty of peace, that portion of the boundary of the United States, from the point where the forty-fifth degree of north latitude strikes the river Iroquois or Cataraguy to the lake Superior, was declared to be “along the middle of said river into lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and lake Erie, thence along the middle of said communication into lake Erie, through the middle of said lake until it arrives at the water communication between that lake and lake Huron, thence along the middle of said water communication into the lake Huron, thence through the middle of said lake to the water communication between that lake and lake Superior.” And whereas doubts have arisen what was the middle of the said river, lakes and water communications, and whether certain islands lying in the same were within the dominions of his Britannic Majesty or of the United States: in order, therefore, finally to decide these doubts, they shall be referred to two commissioners, to be appointed, sworn, and authorized to act, exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article.

“ART. 7. It is further agreed, that the said two last mentioned commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they are hereby, authorized, upon their oaths, impartially to fix and determine, according to the true intent of the said treaty of peace of one thousand seven hundred and eighty-three, that part of the boundary between the dominions of the two powers, which extends from the water communication between lake Huron and lake Superior, to the most north-western point of the lake of the woods, to decide to which of the two parties the several islands lying in the lakes, water communications and rivers, forming the said boundary, do respectively belong, in conformity with

\* The duplicate letters. The fisheries and the Mississippi, documents relating to transactions at the negotiation of Ghent, collected and published by John Quincy Adams, one of the commissioners at that negotiation. Washington, 1822.

This was the end of the war,—a measure into which the country obviously entered with infinite reluctance. The

the true intent of the said treaty of peace of one thousand seven hundred and eighty-three ; and to cause such parts of the said boundary as require it, to be surveyed and marked.

“ ART. 8. The several boards of two commissioners mentioned in the four preceding articles, shall, respectively, have power to appoint a secretary, and to employ such surveyors or other persons as they shall judge necessary. Duplicates of all their respective reports, declarations, statements and decisions, and of their accounts, and of the journal of their proceedings, shall be delivered by them to the agents of his Britannic Majesty, and to the agents of the United States, who may be respectively appointed and authorized to manage the business on behalf of their respective governments. The said commissioners shall be, respectively, paid in such manner as shall be agreed between the two contracting parties, such agreement being to be settled at the time of the exchange of the ratifications of this treaty. And all other expenses attending the said commission shall be defrayed, equally, by the two parties. And in the case of death, sickness, resignation, or necessary absence, the place of every such commissioner, respectively, shall be supplied in the same manner as such commissioner was first appointed, and the new commissioner shall take the same oath or affirmation, and do the same duties. It is further agreed between the two contracting parties, that in case any of the islands mentioned in any of the preceding articles, which were in the possession of one of the parties prior to the commencement of the present war between the two countries, should, by the decision of any of the boards of commissioners aforesaid, or of the sovereign or state so referred to, as in the four next preceding articles contained, fall within the dominions of the other party, all grants of land made previous to the commencement of the war by the party having had such possession, shall be as valid as if such island or islands had, by such decision or decisions, been adjudged to be within the dominions of the party having had such possession.

“ ART. 9. The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians, with whom they may be at war at the time of such ratification ; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights and privileges, which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities : Provided always, that

French revolution cost the United States, substantially, two wars; we could hardly have expected to escape at a less price. America is not a member of the holy alliance; she is not connected with any nation by the form of her government, or by situation, or family compacts. But she is one of the great confederation of Christian states,—one of those powers who, by religion, arts and sciences, compose, what is called the civilized part of the world. In this respect, Eu-

such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic Majesty engages, on his part, to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to, in one thousand eight hundred and eleven, previous to such hostilities: Provided always, that such tribes or nations shall agree to desist from all hostilities against his Britannic Majesty, and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

“ART. 10. Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice, and whereas both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed, that both the contracting parties shall use their best endeavours to accomplish so desirable an object.”

The commissioners were duly appointed, under these respective articles; but, as their reports on all the points of boundaries have not yet been accepted by the respective governments, we are obliged to abstain from making any remarks on those topics. In order to complete the course of treaties and conventions with Great Britain, to the treaty of Ghent, we shall mention in this place, that in January 1802, Mr. King concluded, with lord Hawkesbury, at London, a convention, by which the United States agreed to pay 600,000*l.* to his Britannic Majesty, for the benefit of British creditors under the sixth article of the treaty of '94, on condition of being released from all the obligations of that article. A commission was appointed, under the seventh article of the same instrument, on the subject of American claims for capture, who awarded a large sum, which was paid by Great Britain.

rope becomes only a geographical term. America, maintaining a more constant and frequent intercourse with the most powerful members of the European continent, than (with one exception) they hold with each other, must, unavoidably, partake, in some degree, of the changes, to which they are subject. Her territory, it is true, is not exposed to invasion or dismemberment; but she has rapidly created a great connexion and influence, moral, political and commercial, which will, at all times, render her liable to become involved in the general quarrels, that disturb the old world.

## CHAPTER II.

## COMMERCIAL CONVENTION OF 1815 WITH G. BRITAIN.

*Pitt first proposed a reciprocity of duties—Introduced a bill into Parliament in 1783 for that purpose—Failed—Eden's remarks—1790, date of navigation laws of this country—System of protection still continued, though application altered—Adams, Clay and Gallatin negotiate a convention at London with Robinson, Adams and Goulbourn—Points of laws of nations not touched—Convention strictly commercial—East but not West India trade regulated—Remarks on specie—Perfect equality of importation duties and tonnage rates—Colonial possessions give England great advantages—Theory of convention unequal—Still favourable in practice to U. States—No trade with Indians allowed—Nor between respective territories on this continent—Consuls—Adams minister to England—Bagot to this country.*

THE Treaty of Peace of Ghent was immediately succeeded by a commercial convention, concluded at London in the following July, a document of uncommon importance and interest, being the first successful endeavour, on the part of the U. States, to abolish, by the grave process of a treaty, all discriminating duties, charges and tonnage rates. The experiment was made under the most formidable circumstances, that could be assembled,—the trade of the country being thrown, at once, into competition with that of the wealthiest, as well as greatest commercial nation of the old world, encouraged and reinforced by the contributions and resources of colonies and possessions in every sea and on every continent. These surprising advantages awakened apprehensions in the breasts of some of our ministers for the result of the operation. And at the time of the negotiation, one, who has been much employed of late years in discus-

sions with Great Britain, expressed to his own government a decided and deliberate opinion against the plan ; a judgment, that, in regard to the first action of the convention of 1815, was undoubtedly well founded.

William Pitt, Chancellor of the English Exchequer, is entitled to the applause of having first proposed an abrogation of duties between the United States and Great Britain; probably urged to it, rather, by the original habits of trade,—a desire to continue the ancient commercial system of his country, than by a partiality for the principle, embraced in the arrangement. It is likely, also, that great minister entertained the idea, then prevalent in England, that the mother country could readily attract back to its ports the whole American commerce, in the manner it was carried on before the revolution. And as the commissioners, in concluding the treaty of peace of 1783, had not succeeded in making provision for the regulation of trade and navigation, the proposition should rather be considered a measure, merely necessary to restore and confirm the former commercial intercourse, undoubtedly important to Great Britain, as the American colonial market was one of the best, the world offered. Few statesmen have possessed a more capacious, profound intellect than William Pitt, though not altogether adapted to the times, in which he governed England, from an absence of that energy and decision, with which his illustrious father was so amply endowed ; but we have no idea, that at the commencement of his long political and eventful life, he had deliberated fully and maturely upon this great commercial subject, a conception of modern times, proceeding directly from the freedom of enquiry, now indulged in regard to all important political concerns, and as immediate and distinct a deviation from the commercial system upon which, in the opinion of every Englishman, then rested the prosperity of his country. For the first time Chancellor (in the Shelburne administration) when only twenty-three years of age, Mr. Pitt introduced, in March 1783, into the House of Commons a bill to regulate the commercial intercourse with this country, in which will be found this remarkable language :

“And whereas it is highly expedient, that the intercourse between Great Britain and the said United States should be established on the most enlarged principles of reciprocal benefit to both countries, but, from the distance between Great Britain and America, it must be a considerable time, before any convention or treaty, for establishing and regulating the trade and intercourse between Great Britain and the said United States of America upon a permanent foundation can be concluded.

“Now, for the purpose of making a temporary regulation of the commerce and intercourse between Great Britain and the said United States of America, and in order to evince a disposition of Great Britain to be on terms of the most perfect amity with the said United States of America, and in confidence of a like friendly disposition on the part of the said United States towards Great Britain, be it further enacted, that from and after the the ships and vessels of the subjects and citizens of the said United States of America, with the merchandises and goods on board the same, shall be admitted into all the ports of Great Britain in the same manner, as the ships and vessels of the subjects of other independent sovereign states, but the merchandises and goods on board such ships or vessels of the subjects or citizens of the said United States, being of the growth, produce or manufacture of the said United States, shall be liable to the same duties and charges only as the same merchandises and goods would be subject to, if they were the property of British subjects and imported in British built ships, or vessels navigated by British natural born subjects.”

—“And be it further enacted, that during the time aforesaid, the ships and vessels of the subjects and citizens of the said United States shall be admitted into the ports of his Majesty’s islands, colonies or plantations in America with any merchandises or goods of the growth, produce or manufacture of the territories of the aforesaid United States, with liberty to export from his said Majesty’s islands, colonies or plantations in America to the said territories of the said United States any merchandises or goods whatsoever, and such merchandises and goods, which shall be so imported into, or exported from the said British islands, colonies or plantations in America, shall be liable to the same duties and charges only, as the same merchandises and goods would be subject to, if they were the property of British natural born subjects, and imported or exported in British built ships or vessels, navigated by British seamen.



“And be it further enacted, that during all the time herebefore limited, there shall be the same drawbacks, exemptions and bounties on merchandises and goods, exported from Great Britain into the territories of the said United States of America, as are allowed in the case of exportation to the islands, plantations or colonies now remaining, or belonging to the crown of Great Britain in America.”

The bill met with opposition, and was shortly dismissed to a noiseless death, principally on account of political considerations. The Shelburne administration was then nearly crowded out of place by the profligate coalition of Mr. Fox and Lord North, and, though the measure was supported by the former, while in opposition, it was not renewed when he came into power, an event, (though of short duration) that soon after happened.

On this occasion a principal adversary of the proposition was Mr. Eden, afterwards Lord Auckland, one of the individuals, with whom the unratified treaty of 1806 was negotiated, in which a portion of the same principle of reciprocity was, for the first time, introduced. Feeble reports only of the debates of those remarkable times now remain, but, among other things, that gentleman said,

“The American states lay so contiguous to our West India islands, and the bill, giving the Americans leave to trade with them, there was no shadow of doubt, but they would supply them with provisions from the continent of America to the utter ruin of the provision trade of Ireland, which, at present, supplied the British West Indies;—the fisheries of that kingdom would, of course, be ruined. The next thing to be apprehended was, that we should totally lose the carrying trade, for as the Americans were to be permitted, under this bill, to bring the West India commodities to Europe, so he feared the six hundred ships of this country, which, that trade employed at present, would become useless, not only to the great decrease of our revenue, but the absolute destruction of our navy, arising from the destruction of that great nursery for seamen. The sugar refinery of England would, also, he feared, be destroyed by this bill, for as the Americans could carry the raw sugars to their own country, and manufacture them much cheaper than we could here, the consequence would be, that they would

be able to undersell us in every market. He was not without his apprehensions for the loss of the hat trade, for as by the provisional treaty they had the fur trade resigned to them and at their door, so, of course, they could manufacture hats at a much cheaper rate than we could, and consequently would monopolize the supply of the West India islands with that branch of commerce. There was another circumstance more alarming than all the rest; the Americans on their return from our ports might export our manufacturing tools, and our artificers, emigrating at the same time, we should run the risk of losing our manufactures, perhaps the only advantage we as yet possessed over the Americans, and seeing them transplanted to America."

"The next enacting clause admitted the ships of aliens and the cargoes as the cargoes of British subjects: on this it was observable, that the distinction was not so unfavourable as many gentlemen might suppose, for, though foreign ships paid a duty to the light houses, they were exempted from a shilling per man per month, and, also, from a tonnage and poundage duty, which was paid by British merchant ships. But the other part of the clause, which admitted all goods, the growth, produce, or manufacture of the United States, was of a more serious nature, as it purported to give to a people, now become a foreign state, the trading privileges of British subjects. How was the king, hereafter, to make treaties with the European powers, who claimed to be treated on the footing of the most favoured nation? And was parliament prepared to consent to the admission of all the world as British subjects? Besides how would it operate as to subsisting treaties? He would select the Russian treaty of commerce as an example. [Here Mr. Eden read two several articles of the Russian treaty, importing that the subjects of each contracting power shall have leave to trade in all the ports and towns, where such leave shall be granted to any other nation, and that they shall pay no greater duty for the importation or exportation of their commodities, than is paid by the subjects of other nations.] Would not the bill in question be a direct contravention of that treaty? The renewal of that treaty was probably now in agitation, as it was within two years of expiring; with what face would Sir James Harris say to the Russian minister:—"Sir, I am instructed to renew the old articles, but you must prevail on the Empress to overlook a peculiar circumstance? We

are, at the same time, making a treaty with another foreign nation, to which we are giving the admission of all merchandises of the staple of the Russian empire, free from various charges and restrictions, to which the Russian imports are liable. I acknowledge that this is awkward, because the interests of Russia must, at any rate, suffer by the American independence her growth and produce are the same as the northern states of America, but her ports are frozen during a considerable part of the year when the American ports are open."

This attempt of the ministry being unsuccessful, and no commercial arrangement having been made with Great Britain, the trade remained in an irregular, embroiled condition, being subject on one side to the control of an act of parliament, and on this to the municipal regulations of the state legislatures. But in 1790 a consistent, uniform shape was given to the navigation, as well as the commerce of the country, by the acts of that year, levying fifty cents tonnage rate on alien vessels, and an extra duty of ten per cent on all merchandise, imported in them. These discriminating rates of duties were imposed for the single purpose of protection, for in the year, just mentioned, one third of our domestic produce was transported in foreign bottoms. The act of the year '90 forms the first chapter in the navigation laws of the country, and though the later policy of the government exhibits a bold and, as we believe, thus far successful departure from them, yet the principle of protection is by no means, abandoned. The application is changed, and, having reared into strength and importance one form of investment and employment, it is now observed, offering shelter and encouragement to another. The foreign fabric, whether landed from an alien or national vessel, is subject to the same importation expenses, (this is the principle of reciprocity, or in fashionable language, the liberal principle) but the moment it is offered for circulation and consumption, it carries with it, into the market, the heavy weight of protection to the domestic manufacture, so that we doubt extremely, if the real and universal freedom of trade has been promoted by the modern contrivances, that have been honoured with

an appellation, to which they appear to have little title. Some countries (Holland and Venice for example) have been strictly and solely commercial,—their vessels were carriers, and their towns marts for the greater part of Europe. The source and principle of their wealth lay, therefore, altogether, in freedom of trade. But nations, that combine the two elements, commerce and manufactures, have, thus far in the history of mankind, (and this country does not appear likely to furnish an exception) adopted measures of protection for one or the other, generally for both. And as matters stand at present in the civilized part of the world, it appears to us, that the only question for discussion is, not concerning the abstract principle of protection, but altogether the degree of protection, it is the interest of the three ingredients of agriculture, commerce and manufactures to extend to each other. The federal government began the first year of its organization with the system, and we have since witnessed numerous modifications, relaxations and changes of applications, yet, we think, no one can say, that the principle is now less vigorously, sternly and universally enforced.

The convention of 1815, being the first instance of a departure from the policy of the government, as settled in 1790, and continued for nearly twenty-five years, is properly speaking an æra in the commercial history of the country. During that period the nation enjoyed remarkable prosperity, but it never can be wholly attributed to the navigation laws. The political condition of the civilized world, in fact the best navigation law that could be enacted for our benefit, rendered legislative precautions unnecessary. But since the peace, the Americans have entered into the commercial competition of Europe, and, with the exception of the mother country, no just apprehensions need be entertained for the result. Numerous colonial establishments give to Great Britain an advantage, that makes the struggle more animated.

The commissioners, employed in the negotiation of Ghent, (Messrs. Adams, Clay and Gallatin) after the conclusion of that business, repaired to London, and during the months of May and June (1815) arranged, in conferences with Messrs.

Adams, Robinson and Goulbourn, who appeared for Great Britain, the necessary stipulations of a commercial convention. In our negotiations with England two classes of subjects have presented themselves for discussion ;—one comprising commercial regulations, applicable to a state of war as well as peace ; the other, embracing the rights and duties of the parties, one engaged in war and the other remaining at peace. The subject of impressment and blockades belongs strictly to the laws of nations ; but that of the colonial trade is somewhat of a mixed character. It would not be altogether just to say, that England absolutely declined to discuss at this time the first question, though the coldness, with which the American propositions were received, and the extreme difficulty and embarrassing nature, that government was disposed to ascribe to the matter, amount to little else than a rejection. A discussion of all other points of maritime law was also declined ;—that of trade with an enemy's colony on the ground the British government was not yet informed of the regulations, France intended to adopt in regard to her possessions in the West Indies. The principal commercial topic was settled without difficulty ;—the abrogation of discriminating rates on vessels and importations. In 1806 a proposition, made by Great Britain to this effect, had been inserted in the unratified treaty of that year. But Congress in the winter session of 1814, 15 passed a law to enable the Executive to enter into negotiations on the subject. In order to prevent commercial collisions, it was desirable the countervailing duties, between the United States and Great Britain, should mutually be abolished. Unless the parties agreed to a full suspension of municipal regulations, a system of commercial warfare was likely to be commenced, which would shortly end in an entire nonintercourse. The inconveniences and mischiefs, resulting from this state of things, would probably be greater than any, either country had cause to apprehend from the consequences of a full and fair competition. The simplicity of the stipulation of reciprocity is certainly the best argument that can be employed in its defence, and had, un-

questionably, the principal influence in procuring its insertion into the convention. Few transactions (for example) have been more confused and complicated than the respective enactments of the United States and Great Britain in regard to the West India trade. After the provision of the London treaty in the year '94, placing commerce on a footing of the most favoured nation, had expired by its own operation in 1803, the whole subject remained loose and unsettled, and if slight evils, besides the uncertainty of the thing, only were suffered, the circumstance could, by no means, be safely considered as a rule for the proceedings of the two governments, when the world was at peace.

The only other points, regulated by this instrument, related to the East Indies and the establishment of consuls. The arrangement concerning the first article was, substantially, that of 1794, though not altogether so favourable in restricting our vessels to four ports of entry. The United States have never claimed, as a right, any share in this commerce, though it has been enjoyed with more or less limitation since the peace of 1783. Great Britain has chosen always to regard it as an indulgence,—but in the London treaty the word, “consent,” employed in conveying the privilege, was altered, in this convention, to the word, “agreed.” The extraordinary dominion of the East India Company in Hindoostan, and its singular and complicated connexion with the government at home render, perhaps, this commerce an exception to the usual colonial rules; but there appears to be no doubt, that the American trade in that quarter has been advantageous to the settlements. England has never made a serious objection to its continuance, nor declined to secure it by treaty stipulation. It supplies those countries with a ready medium of exchange, as well as for coinage, highly useful in their mercantile transactions with the more eastern nations. On this account, it has been thought in the United States, that the heavy and constant drain of specie more than counterbalanced the benefits of the trade; but this consideration derives its only weight from the doctrine, now generally in disfavour, that specie

possesses a quality, distinct and separate from that of other kinds of merchandise, which, we believe, never can be observed, except on those occasions, where a slight paralysis or exhaustion is produced by over trade. The disease manifests itself in the effect it has on specie, because this agent is selected by common consent to represent value or wealth, though it would require severe legislative enactments to prevent an article of merchandise, so easy of transportation and concealment, from reaching those markets, where it would bring the best price. But, of late years, an occasional high price of exchange has probably diverted the greatest proportion of specie to Europe, where it has appeared and operated in its true genuine character and capacity of merchandise.

The convention, signed July 3, 1815,\* was strictly com-

\* "The United States of America and his Britannic majesty being desirous, by a convention, to regulate the commerce and navigation between their respective countries, territories and people, in such a manner as to render the same reciprocally beneficial and satisfactory, have respectively named plenipotentiaries and given them full powers to treat of and conclude such convention; that is to say, the president of the United States, by and with the advice and consent of the senate thereof, hath appointed for their plenipotentiaries John Quincy Adams, Henry Clay and Albert Gallatin, citizens of the United States; and his royal highness the prince regent, acting in the name and on behalf of his majesty, has named for his plenipotentiaries the right honourable Frederick John Robinson, vice-president of the committee of privy council for trade and plantations, joint paymaster of his majesty's forces, and a member of the imperial parliament, Henry Goulbourn, Esq. a member of the imperial parliament, and under secretary of state, and William Adams, Esq. doctor of civil laws; and the said plenipotentiaries having mutually produced and shown their said full powers, and exchanged copies of the same, have agreed on and concluded the following articles, *videlicet* :

"ART. 1. Reciprocal liberty of commerce between the territories of the United States and the British territories in Europe. Complete protection to commerce, subject to the laws of each country.

"ART. 2. No other or higher duties shall be imposed on the importation into the United States of any articles, the growth, produce, or manufacture of his Britannic majesty's territories in Europe, and no

mercial, and, being limited to four years, was intended partly as an experiment of the new doctrine of reciprocity. The

higher or other duties shall be imposed on the importation into the territories of his Britannic majesty in Europe of any articles, the growth, produce, or manufacture of the United States, than are or shall be payable on the like articles being the growth, produce, or manufacture of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries, on the exportation of any articles to the United States, or to his Britannic majesty's territories in Europe, respectively, than such as are payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles, the growth, produce, or manufacture of the United States, or of his Britannic majesty's territories in Europe, to or from the said territories of his Britannic majesty in Europe, or to or from the said United States, which shall not equally extend to all other nations.

"No higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels, than those payable in the same ports by vessels of the United States; nor in the ports of any of his Britannic majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels.

"The same duties shall be paid on the importation into the United States of any articles, the growth, produce, or manufacture of his Britannic majesty's territories in Europe, whether such importation shall be in vessels of the United States or in British vessels, and the same duties shall be paid on the importation into the ports of any of his Britannic majesty's territories in Europe, of any article, the growth, produce, or manufacture of the United States, whether such importation shall be in British vessels or in vessels of the United States.

"The same duties shall be paid, and the same bounties allowed on the exportation of any articles, the growth, produce or manufacture of his Britannic majesty's territories in Europe to the United States, whether such exportation shall be in vessels of the United States, or in British vessels; and the same duties shall be paid, and the same bounties allowed on the exportation of any articles, the growth, produce, or manufacture of the United States, to his Britannic majesty's territories in Europe, whether such exportation shall be in British vessels, or in vessels of the United States.

"It is further agreed, that in all cases where drawbacks are, or may be allowed upon the reexportation of any goods, the growth, produce, or manufacture of either country respectively the amount of



American commissioners absolutely declined, in conformity with their instructions, to insert a stipulation, allowing a

the said drawbacks shall be the same, whether the said goods shall have been originally imported in a British or an American vessel, but when such reexportation shall take place from the United States in a British vessel, or from the territories of his Britannic majesty in Europe, in an American vessel, to any other foreign nation, the two contracting parties reserve to themselves, respectively, the right of regulating or diminishing, in such case, the amount of the said drawback.

"The intercourse between the United States and his Britannic majesty's possessions in the West Indies, and on the continent of North America, shall not be affected by any of the provisions of this article, but each party shall remain in the complete possession of his rights, with respect to such an intercourse.

"ART. 3. His Britannic majesty agrees that the vessels of the United States of America shall be admitted and hospitably received at the principal settlements of the British dominions in the East Indies, videlicet: Calcutta, Madras, Bombay and Prince of Wales' Island, and that the citizens of the United States may freely carry on trade between the said principal settlements and the said United States, in all articles of which the importation and exportation, respectively, to and from the said territories, shall not be entirely prohibited; provided only, that it shall not be lawful for them, in any time of war between the British government and any state or power whatever, to export from the said territories, without the special permission of the British government, any military stores or naval stores, or rice. The citizens of the United States shall pay for their vessels, when admitted, no higher or other duty or charge than shall be payable on the vessels of the most favoured European nations, and they shall pay no higher or other duties or charges on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in the vessels of the most favoured European nations.

"But it is expressly agreed, that the vessels of the United States shall not carry any articles from the said principal settlements to any port or place, except to some port or place in the United States of America, where the same shall be unladen.

"It is also understood, that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but the vessels of the United States having in the first instance, proceeded to one of the said principal settlements of the British dominions in the East

British trade with the Indians within our borders, a privilege, of course, mutually renounced, but which had been conceded by the London treaty. This was not done so much for commercial as political considerations, several troublesome circumstances of spoliation having taken place between the traders of the two nations, and an influence attempted to be exercised in regard to the Indians, that could not be attended with any good consequences to this country. One of the permanent articles of the treaty established a mutual exercise of this traffic with the Indians as of trade with the inhabitants of the respective territories on the North American continent. The United States, having declared it their intention not to renew this stipulation, recognised in that act the doctrine, that war abrogates treaties. They, also, declined to include in the convention another portion of the same permanent article, that related to trade and commerce between the citizens and subjects of the respective parties, importations of merchandise into their respective territories being subject to the same charges, whether done by alien or native. In the original provision there was no restriction, as to place or extent of intercourse, on any part of the St. Lawrence above Montreal, or any of the streams, flowing into it from the United States. But in

Indies, and then going with their original cargoes, or part thereof, from one of the said principal settlements to another, shall not be considered as carrying on the coasting trade. The vessels of the United States may also touch for refreshment, but not for commerce, in the course of their voyage to or from the British territories in India, or to or from the dominions of the emperor of China, at the Cape of Good Hope, the Island of St. Helena, or such other places as may be in the possession of Great Britain, in the African or Indian seas; it being well understood that in all that regards this article, the citizens of the United States shall be subject, in all respects, to the laws and regulations of the British government from time to time established.

“ART. 4. Consuls to reside in the dominions of each party. Consuls may be punished according to law, or sent home. Particular places excepted from the residence of consuls.

“ART. 5. This Convention, when ratified, to be obligatory for four years. Ratification exchanged in six months.”

the conference, that preceded the convention of 1815, the British commissioners refused to grant to the Americans the right of carrying their produce down the St. Lawrence to Montreal, or down the Sorel to the St. Lawrence. They sought to restrict our commerce to those waters only, where the boundary line run in the midst of the stream or lake, and, as we hold neither bank of the St. Lawrence, except from the bottom of Lake Ontario to Lake St. Francis, and no territory upon the Sorel, the whole transportation would have fallen into British hands. They rejected the general land and inland communication and navigation, proposed by the American plenipotentiaries. No intercourse, therefore, exists by treaty with the British possessions in North America, and no furs or peltry can ever be brought across our possessions or water communications in the west, without a violation of territory.

In some respects the theory of this convention appeared unequal, though the defects have not in every case been confirmed by a practical operation. An equality of duties on importations, whether in American or British vessels, was respectively established, and it was, also, agreed, that articles of the growth, produce, or manufacture of either of the countries, should not be charged with a higher duty than similar articles, coming from any other foreign country;—that is to say, articles from the United States could be admitted into Great Britain on the same terms as the same articles from Russia, Sweden or Spain, but not on the same terms as the same articles from Canada, Calcutta, or the English West Indies, they not being foreign countries. Whatever, therefore, was grown, produced, or manufactured in a British province of a similar nature with the productions of this country, whether raw or manufactured, entering into the home market, precisely under such advantages as the British government might think it for their interest to confer, almost all the staples of the middle and eastern portions of this Union became in fact excluded;—another of the inconveniences, to which we are exposed, in consequence of the numerous colonial possessions of that people,

situated in every latitude, and enjoying the benefit of every soil and climate. Still, notwithstanding the unfavourable aspect of this part of the stipulation, the transportation of the valuable staples of the southern division of the confederacy is done, almost, exclusively in American bottoms.

This convention gave, also, in the outset, to the British vessel the advantage of the circuitous voyage, or double freight. The American, being immediately excluded from the West Indies, while the English vessel, still retaining the privilege of entering from and departing for those islands from our waters, had the double choice presented of taking a freight either for Europe, or colonial possessions. This evil, not being inherent in the convention, but only an incident, arising from the unequal navigation laws of the two countries, was remedied in the course of 18 months by heavy duties on British vessels, arriving from the West Indies and, finally, by a nonintercourse with those islands. The same state of things produced another result, probably not anticipated. All sort of lumber, when imported into Great Britain from British Provinces, (and they can be imported only in British vessels) pay a small duty, compared with the same descriptions of lumber, imported from the United States either in American or British vessels. Trade, which has such a wonderful instinct in detecting and following the softest vein, was not long in probing the consequences of this unequal rate of duties, but it turned out to the nominal benefit of the British vessel. The lumber, carried to Nova Scotia is thence shipped to England, the whole advantage of the freight of this bulky article remaining with the English.

Nothing can be more evident than the extreme difficulty of making a safe and satisfactory commercial arrangement with Great Britain. The activity and enterprise of the nation are strained to the utmost in counteracting the advantages she has in her colonial possessions: this can be effected neither by treaty stipulation, nor legislative enactment. Commerce winds and turns, till it flows into the best market, with the certainty of water seeking its level, and those

mounds and dykes, a government raises to keep the stream within certain courses and channels, amount to little else than so many taxes and tolls upon its own people. But many of those obstacles have been overcome, and no pecuniary damage has yet been felt by the country. The United States and Great Britain are the best customers to each other, and it is no objection to a system that extends and confirms a friendly as well as profitable connexion and intercourse. An equality of duties and charges on navigation saves much angry correspondence, much retaliatory legislation, and dries up numerous sources of complaint and irritation, and, in the end, will turn to the decided advantage of both nations, compared with that uncertain condition of trade and commerce, which has no more solid and permanent foundation than the capricious or occasional regulations of the respective parties.

John Quincy Adams, engaged in negotiating this convention, was appointed in February 1815, Minister Plenipotentiary and Envoy Extraordinary to the Court of London, and, in the same year, Charles Bagot, being here received in the same capacity, the diplomatic intercourse of the two countries was fully and happily renewed.\*

\* After this convention was ratified, the following declaration was made to the American government by the British chargé at Washington.

"The undersigned, his Britannic majesty's chargé d'affaires in the United States of America, is commanded by his royal highness the prince regent, acting in the name and on the behalf of his majesty, to explain and declare, upon the exchange of the ratifications of the convention concluded at London, on the third of July of the present year, for regulating the commerce and navigation between the two countries, that in consequence of events which have happened in Europe subsequent to the signature of the convention aforesaid, it has been deemed expedient, and determined, in conjunction with the allied sovereigns, that St. Helena shall be the place allotted for the future residence of General Napoleon Bonaparte, under such regulations as may be necessary for the perfect security of his person, and it has been resolved, for that purpose, that all ships and vessels whatever, as well British ships and vessels, as others, excepting only ships

belonging to the East India Company, shall be excluded from all communication with, or approach to, that island.

"It has therefore become impossible to comply with so much of the third article of the treaty as relates to the liberty of touching for refreshment at the Island of St. Helena, and the ratifications of the said treaty will be exchanged under the explicit declaration and understanding, that the vessels of the United States cannot be allowed to touch at, or hold any communication whatever with the said island, so long as the said island shall continue to be the place of residence of the said Napoleon Bonaparte.\*

(Signed)

ANTHONY ST. JNO. BAKER.

*Washington, November 24, 1815."*

\* In consequence of the death of the emperor, Napoleon Bonaparte, this restriction was removed 30th July 1821.

## CHAPTER III.

## COMMERCIAL CONVENTION OF 1818 WITH G. BRITAIN.

*Commercial stipulations the same as those of 1815—Renewed for ten years—Impressment—Tone of British government unfavourable at Ghent—Subject much discussed in 1818—Propositions of England—Remarks—Parties could not agree—Will never be adjusted by a Treaty—A question of sovereignty to the United States—British propositions in regard to other maritime rights—Nothing settled—Gallatin and Rush for United States—Robinson and Goulbourn for England—Fisheries—Extent and boundaries regulated—Curtailed—American and British ground as to effect of war on Treaties—Lord Bathurst's Letter defending British principle—England renounced right to Navigation of Mississippi—United States to certain portion of the Fisheries—Boundaries on the North West settled—To the Rock Mountains—English anxious to confine United States below the course of the Columbia, and to divide the Navigation of the river, and the use of the harbour—Have ambitious projects in that direction—Possess an accurate knowledge of the country by means of their hunters—Americans and English have extended nearly across the Continent—Rush, King, Gallatin and Barbour, ministers to England—Canning and Vaughan to this country—Boundaries—Proceedings on the fourth, fifth, sixth and seventh Articles of the Treaty of Ghent—Decisions and Reports of Commissioners—Convention in regard to the North East—Advantages to both parties from a settlement.*

We shall not detain the reader with any account of the commercial part of this instrument, comprising only a renewal of the stipulations of the convention of 1815 ; but it was the last time the impracticable topic of impressment has appeared at our negotiations with Great Britain. In suffering that subject to be matter of discussion the American government has never admitted, that the pretension of the

English had the least solid foundation, or that the United States did not possess a full right to resist, by an immediate appeal to arms, every similar aggression on their sovereignty. But, being well persuaded that England, on the return of every war, would attempt a renewal of the practice, the government, urged by a steady and laudable desire to remove so intolerable and fatal a circumstance of outrage and dispute, has, in a persevering manner, brought this subject under consideration at every negotiation of a general nature. Although it cannot be said, that much encouragement was afforded for these repeated endeavours, either by a prospect of success, or a recollection of the favourable attention, with which former propositions had been received.

The commissioners, at the negotiations of 1814—1815, found the temper of the British government altogether forbidding on this as well as other subjects, connected with maritime rights, though the proposition, they were authorized to offer, embraced equal and reasonable provisions. It was, in substance, that the two governments should exclude from their vessels all but native, or already naturalized seamen. This stipulation, taken in connexion with the law of 1815, requiring that American vessels should be navigated solely by American or naturalized seamen, would have afforded full security for the English, and as a continued residence of five years was made necessary for naturalization, the wandering, uncertain habits of seamen would have deprived them of nearly all the benefits of the act. At the end, therefore, of a few years, according to the theory of this law, our navigation would be done exclusively by Americans. Undoubtedly, difficulties might be expected to arise in enforcing the provisions of it, in a time of general peace, when the seamen of all maritime nations enjoy the liberty of frequenting every port in quest of employment, but the effectual execution of this particular statute would rest upon the same general foundation as the greater part of the revenue system. As England has never objected to the practice of the American merchant in employing foreign seamen more than to that of transporting articles, contraband of war, all pretension to search and



impress would cease, when an absolute exclusion took place, and though this might not be rendered perfect and entire, the result of the system, applying equally and constantly to every American vessel, would, in its general operation and tendency, be much more favourable to that government; while that of impressment reached only to those cases, with which it accidentally came in contact. Separate from important considerations, touching the relations of the two countries, the United States would naturally be incited to a careful execution of the law from a desire to encourage their own seamen.

In 1818 this grave business was renewed with some slight prospect of arriving at an arrangement. At any rate, the attention, bestowed upon it by both parties, manifested a sincere disposition to give it a thorough examination, though from the result of the conferences at that period, it is quite evident, that in the present state of feelings and circumstances of the two countries, such discussions would be little else than a formal and unnecessary proceeding. Questions occasionally arise between nations, that appear to be beyond the reach, or even control of treaty stipulations. This topic, the most solemn one, that has been entered upon a protocol, since the foundation of the government, and in regard to which the least wavering, compromising or flinching, on the part of the United States, is an absolute surrender of sovereignty, unfortunately belongs to that order of subjects; and as settlement by negotiation has become hopeless, we must, for the present, calmly rely on an expectation, founded in the sense of justice and deliberate judgment of Great Britain, that, hereafter, circumstances may render it inexpedient to resort to the exercise of the pretension.

The proposition of 1815, concerning impressments, was revived at the negotiation of 1818. Objections were made to it, in consequence of the different opinions, entertained on the subject of allegiance, by the two governments, and of the character of sovereignty conferred on American vessels, investing them with the same attributes, as American territory. On the other hand, the opinions, held in this country, relative to allegiance, do not differ from the ancient law authori-

ties, as well as usages of Europe. And, while admitting the exercise of all belligerent rights, within their just limits, in regard to vessels, when met on the high seas, it is, by no means, acknowledged, that the enforcing the municipal regulations of a foreign nation could be comprehended within the range of those rights. But, when it was even proposed to exclude British born subjects from the private and public marine of the United States, it was intimated, that the claim of the British government to enter a foreign vessel in search of men could never be made subject to the control, either of legislative enactment or treaty stipulation. Lord Castlereagh, indeed, made an informal proposal on this topic, which his government appeared willing to incorporate in a treaty ;—it was in these words :

“ 1. That the treaty, containing the stipulation, should be limited to a duration of ten or twelve years, with liberty to each party to be absolved from its stipulations on a notice of three or six months. 2. That the British boarding officer, entering American ships at sea for a purpose, justified under the law of nations, should have the liberty of calling for a list of the crew, and if he saw a man, whom he knew or suspected of being an English subject, he should, without taking the man, have the privilege of making a record or *procès verbal* of the fact, to be presented to the consideration of the American government.”—But, “in the first place, the distrust, which it implies, that the laws, for excluding British seamen, will, though stipulated, not be faithfully executed, is not warranted by any experience, nor can this government give countenance to it by assenting to any stipulation, which would be considered as resulting from it. If the United States bind themselves to this exclusion, they will sincerely and faithfully carry it into execution. It was not expressly asked by Lord Castlereagh in his proposal that the officer, in calling for the shipping paper, should, also, have the power of mustering the crew, to examine them by comparison with the list ; but as the mere view of the list would be useless, coupled with that power, we consider it as having been intended to be included in the proposal ; and this very inspection of the crews of our vessels by a foreign officer has been found among the most insulting and grievous aggravations of the practice

of impressment. Besides this, the tendency of such an examination in every single instance would be to produce altercation between the British officer and the commander of the American vessel. If the officer should be authorized to make a record of his suspicions, the master, on his side, and the suspected seamen must, of course, have the privilege of making their counter record; and as there would be no tribunal to judge between them, the probable, ultimate result could be no other, than that of exciting irritation between the two nations, and discussions between the governments.

“ If the engagement to exclude British seamen from our service should fail of being executed to an extent, worthy of the slightest attention of the British government, they could not avoid having notice of it, by proofs more effectual and more abundant than could be furnished by this sort of scrutiny; a failure of execution on our part to any such extent would give them, not only the right of remonstrating to ours, but even of cancelling their obligation within a lapse of time, which must guard them against the danger of any material, national injury. We have the fullest confidence that, if the engagement, on both sides, be once contracted, Great Britain will, thenceforward, have no lawful or even plausible motive, either for wishing it cancelled, or for inspecting the crews of our vessels in search of men.”

On a subsequent occasion, Messrs. Goulbourn and Robinson delivered to Messrs. Gallatin and Rush, employed to negotiate the convention of 1818, a project of an arrangement, which we shall extract at length for the single purpose of showing, what stipulations England was willing to admit concerning this difficult question.

“ ART. 1. The high contracting parties engage and bind themselves to adopt respectively, without delay, the most effectual measures for excluding respectively from serving either in their public or private marine the *natural born* subjects and the *natural born* citizens of the other party: Provided always, that nothing contained in this article, shall be understood to apply to any seamen, being *natural born* subjects of his Britannic Majesty, or *natural born* citizens of the United States, who have been naturalized by the respective laws of either power, previous to the signature of the present convention.

"ART. 2. The high contracting parties engage to deliver each to the other, within eighteen months from the ratification of the present convention, a list, as far as it may be found practicable to obtain it, containing the names and description of the seamen, falling within the said exception, specifying the places of their birth and the date of their becoming naturalized. And it is further agreed, that no person, whose name shall not be included in the said lists, shall be deemed to fall within the said exceptions.

"ART. 3. It is, however, agreed, that if one of the high contracting parties shall, at any time during the continuance of this convention, think fit to notify to the other, that it does not insist upon the exclusion of its natural born subjects, or natural born citizens, from the public or private marine of the other party, it shall be competent to the said other party, notwithstanding the engagement set forth in the first article of this convention, no longer to exclude the said subjects or citizens. Provided always, that whenever the power, which has made the said notification, shall recall the same, its recall shall be immediately communicated to the other contracting party, and on receipt of such communication, the power, receiving the same, shall, forthwith, make it known in the most public and official manner, and shall use its utmost endeavours to restrain the said subjects or citizens of the other party from further serving in its public or private marine, and shall obtain the exclusion of such of the said subjects or citizens of the other power, as may then be in its service, as if no such stipulations, as are contained in the preceding part of this article, had been agreed to.

"ART. 4. It is agreed by the high contracting parties, that, during the continuance of the present convention, neither power shall impress or forcibly withdraw, or cause to be impressed or forcibly withdrawn, any person or persons from the vessels of the other party, when met upon the high seas, or upon the narrow seas, on any plea, or pretext whatsoever. Provided always, that nothing contained in this article, shall be construed to impair or effect the rights of either power to impress or forcibly withdraw, or cause to be impressed or forcibly withdrawn, its natural born subjects, or natural born citizens, not falling within the exceptions, mentioned in the preceding articles, from any vessel, being within its ports, or within its ordinary maritime jurisdiction, as acknowledged by the law of nations: And also provided, that nothing, herein con-

tained, shall be construed to impair or affect the established right of search, as authorized in time of war by the laws of nations.

"ART. 5. The high contracting parties have agreed to extend the duration of the present treaty to ten years, and they reserve to themselves to concert, as to its renewal, at such convenient period, previous to its expiration, as may ensure to their respective subjects or citizens, as aforesaid, the uninterrupted benefit, which they expect from its provisions. Provided always, that either power may, if it deem it expedient, upon giving six months previous notice to the other, wholly abrogate and annul the present treaty.

"ART. 6. It is agreed that nothing, contained in the preceding articles, shall be understood to impair or affect the rights and principles on which the high contracting parties have, heretofore, acted in respect to any of the matters to which these stipulations refer, except so far as the same shall be modified, restrained or suspended by the said articles."

The article was brought forward and inserted on the ninth protocol amended by the British commissioners in a manner, partly to remove the objections of the American, in regard to the difficulty of procuring lists of naturalized seamen.\* It was not, however, accepted in that shape. In this project the British government suspended their right, for a specified term of six months, to visit and search vessels for their seamen, either upon the high or narrow seas;—in other words, England agreed to renounce its practice of impressment during peace, and on the breaking out of a maritime war, when crews would be again wanted, it could not be resumed, without notifying the fact to the foreign government six months previous. The life of the whole instrument hung upon this single provision.

"But even if the intention was, that this right of dissolving the compact by a notice of six months should apply only to the article against impressment, its acceptance is objectionable on other grounds. The engagement to exclude all British seamen from our

\* This stipulation was originally accepted by the American commissioners at the fourth conference, but rejected on deliberation.

sea service will operate immediately from its commencement, with some inconvenience to our merchants. Since the peace and the dispersion of the vast number of seamen, disbanded from the British navy, there are, no doubt, considerable numbers of them, who have found employment on board our vessels, and their exclusion from them will not be accomplished without some inconvenience. The effect of the stipulation of Great Britain to take no men from our vessels is remote, and contingent upon the event of her being engaged in a maritime war with other powers. The onerous part of the engagement is, therefore, to us immediate and certain, the benefit to be derived from it, distant and eventual. If to this apparent inequality should be added a power, reserved by Great Britain, to cancel the bargain by a simple notice of six months, we could scarcely consider it as a contract. It would be a positive concession and sacrifice on our part, for the mere chance of a future equivalent for it, altogether dependent upon the will of the other party."

We are not disposed to deny, that this article does not wear on its face a liberal, enticing expression ; it is an uncommon departure from the principles and language, heretofore asserted and held by England, and a very near approach to the proposition of this government on a topic, on which it might well be supposed, the United States would be willing to concede many details, for the sake of avoiding the dangerous collisions, to which the practice of impressment has exposed them. We believe, however, that upon a full consideration of all the provisions, the project embraces only nominal advantages, and that, in fact, Great Britain abandoned the pretension during a period, when she had no inducements to exercise it. The claim to enter our vessels in search of men was not renounced, though the proposition, made by this government, was a great sacrifice on its part ;—to forego the employment of all foreign seamen and even to exclude all *British born* subjects. The latter clause of the stipulation would be less mischievous to our navigation, because the greater portion of foreign seamen in the merchant service of this country, probably, come from the shores of the Baltic and the north sea. It would be an evil to deprive

ourselves of this class of men, as well as foreign workmen in many branches of business. The supply of labour is not yet equal to the demand and cannot well be for many years, though the deficiency in regard to seamen is more especially perceived of late. This is, partly, occasioned by the creation of more employment at home by the establishment of manufactories in those parts of the country, that furnished the supply, and by the opportunity, the peace affords to the European nations, to carry on their own fisheries as well as trade.

The whole operation of the law of March 1813, for the regulation of seamen on board the public and private vessels of the United States, would have been to the disadvantage of this country; for the simple, plain reason that wages are higher here. By that act we agreed to exclude from our service, navy and merchant, at the peace with Great Britain, all seamen not naturalized, (accompanied with a circumstance, respecting the proof of naturalization, somewhat difficult for that class of persons often to comply with) belonging to those countries, whose governments should adopt a similar regulation in regard to our citizens. But, whether other governments paid any attention or not to this proposition, the rate of wages is the only law required to exclude every American from their vessels. England has always known she could not, in time of peace, prevent her subjects from entering into our service. Submitting, therefore, to this evil and necessity, she refuses to trust to the ordinances of a foreign government to restore her seamen, when the urgencies of war compel her again to send forth her thousand sail of armed vessels. She retains the application of this claim within her own hands;—the execution of her municipal regulations within the jurisdiction of a foreign state, as a terror and beacon of warning to her own subjects. The whole difficulty, by no means, rests in the system of naturalization, in the principle of allegiance, that prevails in this country, adopted, with a modification of details, from the usages of Europe, but in the full, direct, distinct right England claims to enter with her officers our ships and search for

her subjects. We confess it appears to us, that very little satisfaction for either party would attend any arrangement, which did not fully and formally provide for the entire, absolute abandonment of the pretension. The failure of this attempt brings to a close all negotiation on the subject of impressment. In placing upon record this last sincere and earnest endeavour to settle a "great and formidable controversy," we may the more deeply lament the ill success, that has attended it, as it was made in a season of profound peace, when the relations as well as dispositions of the two people were of a friendly character.

In our different negotiations with England we have no recollection of having met with a stipulation upon any topic, arranged with more skill, or with more nicely adjusted parts and proportions than the one, recited on a preceding page, in regard to impressment. Projects, respecting other maritime rights, were inserted by the English commission on the same protocol, and though not introduced into the convention, we shall give them below in a note to illustrate the temper, views and disposition of the British government at this period. In future discussions, it may be important to refer to the doctrines, entertained in 1818, on those momentous subjects.\*

\* "ART. (a). Whenever one of the high contracting parties shall be at war, any vessel of the other party, sailing for a port or place belonging to an enemy of the party at war, without knowing that the same is blockaded, may be turned away from such port or place, but she shall not be detained on account of such blockade, unless, after such notice, she shall again attempt to enter. And in order to determine what characterises a blockade, it is agreed, that that denomination shall apply only to a port, where there is, by the disposition of the power, which blockades it with a naval force, stationary or sufficiently near, an evident danger in entering.

"ART. (b). In order to regulate, what is, in future, to be deemed contraband of war, it is agreed, that, under the same denomination, shall be comprised all arms and implements, serving for the purposes of war by land or by sea, such as cannon, mortars, &c. and generally all other implements of war, as also timber for ship building, tar or rosin, copper in sheets, sails, hemp and cordage, and generally what-



The most important matter,\* adjusted at this negotiation, was the fisheries. The position, assumed at Ghent, that the

ever may serve directly to the equipment of vessels, unwrought iron and planks only excepted, and all the above articles are hereby declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

"ART. (c). In all cases of unfounded detention, or other contravention of the regulations, stipulated by the present treaty, the owners of the vessel and cargo detained, shall be allowed damages, proportioned to the loss occasioned thereby, together with the costs and charges of the trial. All proper measures shall be taken to prevent delays in deciding the cases of ships or cargoes, so brought in for adjudication, and, in payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ships or cargoes. And whenever sentence shall be pronounced against any vessel, thus captured or detained, or against her cargo, or any part thereof, a duly authenticated copy of all the proceedings in the cause and of the said sentence, shall, if required, be delivered without delay to the commanders of the said vessels, or to the owner thereof, or to the agent of either, on payment of all legal fees and demands for the same.

"The commanders of ships of war and privateers of the belligerent party shall, in the searching of the merchant ships of the other party, conduct themselves according to the acknowledged principles and rule of the law of nations and as favourably, moreover, as towards the most friendly power, that may remain neuter. The said commanders, their officers and crew shall forbear doing any damage to the subjects or citizens of the other party, or committing any outrage against them, and if they act to the contrary, they shall be punished, and shall, also, make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

"It shall not be lawful for any power or state at war with either of the high contracting parties, or the subjects or citizens of such power or state to fit out or arm ships of war or privateers in the ports of the other of the high contracting parties, nor to sell what they may take as prize from the ships or vessels of the high contracting party, with whom such power or state may be at war, in the ports of the other, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for

\* The convention of 1818 was negotiated at London, by Messrs. Gallatin and Rush, for this country, and Messrs. Robinson and Goulbourn on the part of Great Britain; it was signed the 20th of

fishery rights and liberties were not abrogated by war, was again insisted on, and those portions of the *coast* fisheries re-

their going to the nearest port of that power or state, to which they belong."

These articles are of slight importance in themselves, though the two first contain a deviation from the British practice during the last war—vessels not having heard of a blockade were not liable to capture for the first attempt to enter the invested port, and provisions are exempted from the list of contrabands, though most of the articles necessary for ship building were included.

October, and ratified by the United States, January 28, 1819, and by England, November 2, 1818.

"ART. 1. Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry and cure, fish, on certain coasts, bays, harbours and creeks, of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Ramian islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalen islands, and also on the coasts, bays, harbours and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Bellisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company: And that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours and creeks, of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors or possessors of the ground. And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours, of his Britannic Majesty's dominions in America, not included within the above mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and of repairing damages therein, of purchasing wood,

linquished on this occasion, were renounced by express provision, fully implying, that the whole right was not consid-

and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

"ART. 2. It is agreed, that a line drawn from the most north western point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarkation between the territories of the United States and those of his Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of his Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

"ART. 3. It is agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbours, bays and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens and subjects, of the two powers: it being well understood, that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences amongst themselves.

"ART. 4. All the provisions of the convention "to regulate the commerce between the territories of the United States, and of his Britannic Majesty," concluded at London, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, with the exception of the clause which limited its duration to four years, and excepting, also, so far as the same was affected by the declaration of his Majesty respecting the island of St. Helena, are hereby extended and continued in force for the term of ten years from the date of the signature of the present convention, in the same manner as if all the provisions of the said convention were herein specially recited.

"ART.

ered a new grant. The American commissioners in 1814, were instructed not to bring that subject into discussion, and the proposition, ultimately submitted, securing the rights and liberties, as in the treaty of '83, arose from a stipulation, offered by the British commission, respecting the Mississippi, a right invested by the American with the same permanent character, as the fisheries themselves. The English, knowing the slight comparative value of the Mississippi, proposed, the two parties should resume their respective rights in consideration, respectively, of a full equivalent, but this proposition was not accepted, for, in the opinion of one party, the right remained entire, and lest it should be impaired by implication, the American commission offered to recognise the right of Great Britain to the navigation, and declined the boundary of the parallel of the 49th degree to the north,

"ART. 5. Whereas it was agreed by the first article of the treaty of Ghent, that "All territory, places and possessions, whatsoever, taken by either party from the other, during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in said forts or places, which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves, or other private property;" and whereas, under the aforesaid article, the United States claim for their citizens, and as their private property, the restitution of, or full compensation for, all slaves who, at the date of the exchange of the ratifications of the said treaty, were in any territory, places, or possessions, whatsoever, directed by the said treaty to be restored to the United States, but then still occupied by the British forces, whether such slaves were, at the date aforesaid, on shore, or on board any British vessel, lying in waters within the territory or jurisdiction of the United States; and whereas differences have arisen whether, by the true intent and meaning of the aforesaid article of the treaty of Ghent, the United States are entitled to the restoration of, or full compensation for, all or any slaves, as above described, the high contracting parties hereby agree to refer the said differences to some friendly sovereign or state, to be named for that purpose; and the high contracting parties further engage to consider the decision of such friendly sovereign or state to be final and conclusive on all the matters referred."

(since agreed on) not choosing, even, to accept an implied renunciation on the part of Great Britain to that navigation.

The instructions for the Commissioners in 1818 do not agree precisely with the position, assumed at Ghent, respecting the Mississippi, and it may, also, be observed, that the whole third article of the treaty of '83 does not appear to convey, in one respect, either a perfect, or permanent right. In the first place, our fishermen were not allowed to cure or dry their fish on any part of Newfoundland, or any part of Labrador or of Magdalen Islands or of Nova Scotia, in spots, where settlements were or should be made. Without the liberty to cure and dry, the coast fisheries, carried on in these places, lost much of their value, and as the fish taken on those grounds are, for the most part, small, they would not be so valuable as even the deep water bank fisheries. The article, therefore, not only entirely excluded our fishermen from Newfoundland, but in certain contingencies from all British shores. Before the revolution, our privileges and rights were as extensive as those of other British subjects. The right was, therefore, retained, much shorn and mutilated, and depending, for the exercise of a portion of it, on a condition, subject to a gradual decay. The convention of 1818 has still farther narrowed and curtailed the fishing grounds, and, though the whole negotiation proceeded on the basis, that the late hostilities had not abrogated several of the stipulations of the treaty of 1783, yet as to one article, the American commission consented to a considerable abridgment of the rights, or liberties (to use the treaty word) of this country, and as to another, (the Mississippi) they declined to entertain any discussion respecting it. Still, both these articles, according to the doctrines of the Ghent negotiation, were in the nature of a permanent, irrevocable grant. A certain part of the doctrine, as to the effect of war on the treaty of '83, is undoubtedly sound, but it appears to us, the remark is equally just, that certain portions of the fishing rights or liberties have, from the commencement of the first negotiation with England, been made the subject of treaty

regulation. These remarks, of course, do not apply to the bank, or deep water fisheries, about which all formal stipulations are needless.

We shall now proceed to relate the incidents, that led to the introduction of this subject into the negotiation for the convention of 1818. In the summer after the peace of Ghent, our fishing vessels were warned off the British coasts by regular endorsements on their enrolment and license to the distance, even, of sixty miles ;—and those, that had gone into creeks and inlets of Nova Scotia, were detained and sent to Halifax. The first of these acts was disowned by the British government, though, at the same time, it was intimated to be their intention, thereafter, to exclude American fishing vessels one marine league from their shores in British America ;—and in the other instance, the vessels, detained, having been tried in the Admiralty Court in Halifax, were released on the ground, as we understand the matter, not that the rights of the Americans to fish on British coasts were not dissolved by the war of 1812, but that condemnations could not take place without an act of Parliament. These circumstances, coupled with the declaration of the British government, just mentioned, left this country no alternative, but to subject, to a fresh examination, the stipulations on the subject in the first treaty of peace. Having in a former part of this work exhibited an outline of the argument, upon which rested the claim on the part of the United States, we may, without omitting any important considerations, state the general ground, upon which it was again vindicated, as well as the reply of the British government, though this will be presented with more detail, having only as yet adverted to one view of the subject.

“ It cannot be necessary to prove that the treaty of '83 is not, in its general provisions, one of those, which, by the common understanding and usage of civilized nations, is or can be considered as annulled by a subsequent war between the same parties. To suppose that it is, would imply the inconsistency and absurdity of a sovereign and independent state, liable to forfeit its right of sovereignty by the act of exercising it on a declaration of war. But

the very words of the treaty attest, that the sovereignty and independence of the United States were not considered, or understood, as grants from his majesty ; they were taken and expressed as existing before the treaty was made, and as then only, first, formally recognised and acknowledged by Great Britain.

“ Precisely of the same nature were the rights and liberties in the fisheries. They were in no respect grants from the King of Great Britain to the United States, but the acknowledgment of them as rights and liberties enjoyed before the separation of the two countries, and which, it was mutually agreed, should continue to be enjoyed under the new relations, which were to subsist between them, constituted the essence of the article, concerning the fisheries. The very peculiarity of the stipulation is an evidence, that it was not on either side understood, or intended as a grant from one sovereign state to another. Had it been so understood, neither could the United States have claimed, nor would Great Britain have granted gratuitously any such concession. There was nothing either in the state of things, or in the disposition of the parties, which could have led to such a stipulation, as on the ground of a grant without an equivalent by Great Britain.

“ But such is the ground, upon which it appears to have been contemplated, as resting by the British government, when their plenipotentiaries at Ghent communicated to those of the United States their intentions, as to the northern American fisheries, viz. “ That the British government did not intend to grant to the United States gratuitously the privileges, formerly granted by treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes, connected with the British fisheries.”

“ These are the words, in which the notice, given by them, is recorded in the protocol conference of the 8th of August 1814. To this notice the American plenipotentiaries first answered on the 9th of August, that they had no instructions from their government to negotiate upon the subject of the fisheries, and afterwards in their note of 10th November 1814, they expressed themselves in the following terms.

“ In answer to the declaration, made by the British plenipotentiaries, respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th August, can only state, that

they are not authorized to bring into discussion any of the rights or liberties, which the United States have, heretofore, enjoyed in relation thereto. From their nature and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the government of the United States to entitle them to the full enjoyment of all of them."

"If the stipulation of the treaty of 1783 was one of the conditions, by which his majesty acknowledged the sovereignty and independence of the United States; if it was the mere recognition of rights and liberties, previously existing and enjoyed, it was neither a privilege gratuitously granted, nor liable to be forfeited by the mere existence of a subsequent war. If it was not forfeited by the war, neither could it be impaired by the declaration of Great Britain, that she did not intend to renew the grant. Where there had been no gratuitous concession, there could be none to renew;—the rights and liberties of the United States could not be cancelled by the declaration of Great Britain's intentions. Nothing could abrogate them, but the renunciation of them by the United States themselves."

"Let it be supposed that the notice, given by the British Plenipotentiaries in relation to the fisheries, had been in reference to another article of the same treaty. That Great Britain had declared she did not intend to grant again, gratuitously, the grant in a former treaty of peace, acknowledging the United States as free, sovereign and independent states, or, that she did not intend to grant gratuitously the same boundary line, which she had granted in the former treaty of peace. Is it not obvious that the answer would have been, that the United States needed no new acknowledgment of their independence, nor any new grant of their boundary line. That if their independence was to be forfeited, or their boundary line curtailed, it could only be by their own acts of renunciation, or of cession, and not by the declaration of the intentions of another government? And if this reasoning be just with regard to the other articles of the treaty of 1783, upon what principle can Great Britain select one article, and say this particular stipulation is liable to forfeiture by war, or by the declaration of her will, while she admits the rest of the treaty to be permanent and irrevocable? In the negotiation of Ghent, Great Britain did



propose several variations of the boundary line, but she never intimated, that she considered the line of the treaty of 1783, as forfeited by the war, or that its variation could be effected by the mere declaration of her intention. She perfectly understood, that no alteration of that line could be effected, but by the express assent of the United States, and when she finally determined to abide by the same line, neither the British nor the American plenipotentiaries conceived that any new confirmation of it was necessary. The treaty of Ghent in every one of its essential articles refers to that of 1783, as being still in force. The object of all its articles, relative to the boundary, is to ascertain with more precision and to carry into effect the provisions of that prior compact. The treaty of 1783 is, by a tacit understanding between the parties and without any positive stipulation, constantly referred to as the fundamental law of the relations between the two nations. Upon what ground, then, can Great Britain assume, that one particular stipulation in that treaty is no longer binding upon her?"

The doctrine of the British government is fully developed in the following able letter of Lord Bathurst of October 1815, the greater part of which we shall extract.

"The minister of the United States appears by his letter to be well aware, that Great Britain has always considered the liberty, formerly enjoyed by the United States, of fishing within British limits and using British territory, as derived from the third article of the treaty of 1783 and from that alone. And that the claim of an independent state to occupy and use, at its discretion, any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation. It is unnecessary to enquire into the motives, which might have originally influenced Great Britain in conceding such liberties to the United States, or whether other articles of the treaty, wherein these liberties are specified, did or did not, in fact, afford an equivalent for them, because all the stipulations profess to be founded on reciprocal advantages and mutual convenience. If the United States derived from that treaty privileges, from which other independent nations, not admitted by treaty, were excluded, the duration of the privileges must depend on the duration of the instrument, by which they were granted, and if the war abrogated the treaty, it determined the privileges. It has been urged, in-

deed, on the part of the United States, that the treaty of 1783, was of a peculiar character, and that because it contained a recognition of American independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties ;—she cannot, therefore, consent to give to her diplomatic relations with one state a different degree of permanency from that, on which her connexion with all other states depends. Nor can she consider any one state at liberty to assign to a treaty, made with her, such a peculiarity of character as shall make it, as to duration, an exception to all other treaties, in order to found on a peculiarity, thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions.

“The treaty of Ghent has been brought forward by the American minister, as supporting by its reference to the boundary line of the United States, as fixed by the treaty of 1783, the opinion, that the treaty of 1783 was not abrogated by the war. The undersigned, however, cannot observe in any one of its articles any express or implied reference to the treaty of 1783, as still in force. It will not be denied, that the main object of the treaty of Ghent was the mutual restoration of all territory, taken by either party from the other during the war. As a necessary consequence of such a stipulation, each party reverted to their boundaries as before the war, without reference to the title, by which these possessions were acquired, or to the mode in which their boundaries had been previously fixed. In point of fact the United States had before acquired possession of territories, asserted to depend on other titles, than those, which Great Britain could confer. The treaty of Ghent adverted, as a fact of possession, to certain boundaries of the United States, which were specified in the treaty of 1783, but surely it will not be contended, that, therefore, the treaty of 1783 was not considered at an end.

“It is justly stated by the American minister, that the United States did not need a new grant of the boundary line. The war did not arise out of a contested boundary, and Great Britain, therefore, by the act of treating with the United States, recognised that nation in its former dimensions, excepting so far as the *jus belli* had interfered with them, and it was the object of the treaty of Ghent to cede such rights to territory as the *jus belli* had conferred.

"Still less does the free navigation of the Mississippi, as demanded by the British negotiators at Ghent, in any manner express or imply the nonabrogation of the treaty of 1783, by the subsequent war. It was brought forward by them as one of many advantages, which they were desirous of securing to Great Britain, and if in the first instance, demanded without equivalent, it left it open to the negotiators of the United States to claim for their government, in the course of their conferences, a corresponding benefit. The American minister will recollect, that propositions of this nature were at one time under discussion, and that they were only abandoned at the time, that Great Britain relinquished her demand to the navigation of the Mississippi. If then the demand on the part of Great Britain can be supposed to have given any weight to the present argument of the United States, the abandonment of that demand must have effectually removed it.

"It is by no means unusual for treaties, containing recognitions and acknowledgments of title in the nature of perpetual obligation, to contain, likewise, grants of privileges, liable to revocation. The treaty of 1783, like many others, contained provisions of different characters, some in their own nature irrevocable, and others of a temporary nature. If it be thence inferred that, because some advantages, specified in that treaty, would not be put an end to by the war, therefore all the other advantages were intended to be equally permanent, it must first be shown, that the advantages, themselves, are of the same or at least of a similar character, for the character of one advantage, recognised or conceded by treaty, can have no connexion with the character of another, though conceded by the same instrument, unless it arises out of a strict and necessary connexion between the advantages themselves. But what necessary connexion can there be, between a right to independence and a liberty to fish within British jurisdiction, or to use British territory? Liberties within British limits are as capable of being exercised by a dependent as by an independent State, and cannot therefore be the necessary consequence of independence.

"The independence of a state is that which cannot be correctly said to be granted by a treaty, but to be acknowledged by one. In the treaty of 1783, the independence of the United States was certainly acknowledged, not merely by the consent to make the treaty, but by the previous consent to enter into the provisional articles,

executed in November 1782. The independence might have been acknowledged without either the treaty, or the provisional articles ; but by whatever mode acknowledged, the acknowledgment is, in its own nature, irrevocable. A power of revoking, or even of modifying it, would be destructive of the thing itself, and therefore all such power is necessarily renounced, when the acknowledgment is made. The war could not put an end to it for the reason, justly assigned by the American minister, because a nation could not forfeit its sovereignty by the act of exercising it, and for the further reason, that Great Britain, when she declared war on her part against the United States, gave them, by that very act, a new recognition of their independence.

“ The nature of the liberty to fish within British limits, or to use British territory, is essentially different from the right to independence in all that may reasonably be supposed to regard its intended duration. The grant of this liberty has all the aspect of a policy, temporary and experimental, depending on the use, that might be made of it, on the condition of the islands and places, where it was to be exercised, and the more general conveniences or inconveniences in a military, naval or commercial point of view, resulting from the access of an independent nation to such islands and places.

“ When, therefore, Great Britain, admitting the independence of the United States, denies their right to the liberties, for which they now contend, it is not that she selects from the treaty articles or parts of articles, and says, at her own will, this stipulation is liable to forfeiture by war, and that it is irrevocable ; but the principle of her reasoning is, that such distinctions arise out of the provisions themselves, and are founded on the very nature of the grants. But the rights, acknowledged by the treaty of 1783, are not only distinguishable from the liberties, conceded by the same treaty, in the foundation, upon which they stand, but they are carefully distinguished in the treaty of 1783 itself. The undersigned begs to call the attention of the American minister to the wording of the 1st and 3d articles, to which he has often referred for the foundation of his arguments. In the first article, Great Britain acknowledges an independence, already expressly recognised by the powers of Europe and by herself in her consent to enter into the provisional articles of November 1782. In the 3d article Great

Britain acknowledges the *right* of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation. But they are to have the *liberty* to cure and dry them in certain, unsettled places within his majesty's territory. If these liberties, thus granted, were to be as perpetual and indefeasible as the rights, previously recognised, it is difficult to conceive that the plenipotentiaries of the United States would have admitted a variation of language, so adapted, as to produce a different impression, and, above all, that they should have admitted so strange a restriction of a perpetual and indefeasible right as that, with which the article concludes, which leaves a right, so practical and so beneficial as this is admitted to be, dependent on the will of British subjects, in their character of inhabitants, proprietors, or possessors of the soil, to prohibit its exercise altogether.

"It is surely obvious, that the word *right* is, throughout the treaty, used as applicable to what the United States were to enjoy in virtue of a recognised independence, and the word *liberty* to what they were to enjoy as concessions, strictly dependent on the treaty itself.

"The right of the United States has been asserted upon other arguments, which appear to the undersigned not altogether consistent with those, that had been previously advanced. It has been argued by the minister of the United States, that the treaty of 1783 did not confer upon the United States the liberty of fishing within British jurisdiction and using British territory, but merely recognised a right, which they previously had, and it has been thence inferred, that the recognition of this right renders it as perpetual, as that of their independence.

"If the treaty of 1783 did not confer the liberties in question, the undersigned cannot understand, why in their support the point should have been so much pressed, that the treaty is in force, notwithstanding the subsequent war. If, as stated by the American minister, the time of the settlement of North America was the origin of the liberties of the United States in respect to the fisheries, and independence, as recognised in 1783, was, as further argued by him, the mere recognition of rights and liberties previously existing, (which must have been in virtue of their independence) it would seem to follow, that their independence was recognised from

the time of the settlement of North America—for no other period can be assigned. The undersigned is totally unable to collect, when the American minister considers the independence of his country to have commenced, yet this is a point of no small importance, if other rights are to be represented as coeval with it, or dependent on it.

“As to the origin of these privileges in point of fact, the undersigned is ready to admit, that, so long as the United States constituted a part of the dominions of his majesty, the inhabitants had the enjoyment of them, as they had of other political and commercial advantages in common with his majesty's subjects. But they had, at the same time, in common with his majesty's other subjects, duties to perform, and when the United States, by their separation from Great Britain, became released from the duties, they became excluded, also, from the advantages of British subjects.”

A full power was sent to the minister in London in the beginning of 1816, to adjust this difference, and in the autumn of the same year a proposition was made by the British minister in this country, offering the coast between Mount Joli, on the Labrador shore, and the straits of Bell' Isle, and between cape Ray and the Ramian islands on Newfoundland;—this was declined. These limits were not fully regulated, till the present convention, and, besides the boundaries offered in 1816, they now include a right to fish from Cape Ray to the Ramian Islands;—on the shores of the Magdalen Islands, and through the straits of Bell' Isle to an indefinite extent, with liberty to dry on the unsettled parts of the north coast of Newfoundland between the aforesaid limits and the coast of Labrador, as before described. American fishermen have, also, the privilege of entering the bays, creeks and harbours of all the British coasts for the specified purpose of procuring wood and water, repairing damages, or seeking shelter. This is the full, entire coast fishing right and liberty, renewed and confirmed by the stipulation of 1818. Under the agreement of 1783 our fishermen had a right to fish on all the coasts of New Brunswick, both north, east and south of Nova Scotia,—of all the islands in the Gulf of St. Lawrence, and of the whole of Newfoundland, with liberty

to dry on the unsettled parts of Labrador, Nova Scotia and Magdalen Islands ;—in other words, we have renounced the right to come within three marine miles of any British shore, west of longitude about 62, and south of latitude about 47. Even, therefore, if we fish on the prohibited grounds outside the marine league, we can neither approach the shore to dry or take bait, both important considerations.\* And, indeed, as the cod strike in for the shores in pursuit of small fry (called by the fishermen capling, and used by them for bait) the fishing is probably not good outside the limit. One object the British government had in view, in restraining our vessels to a distance of three miles, was probably to afford less opportunity for smuggling, a practice of which they made great complaints. In the stipulation there is no provision, that the right shall not be abrogated by a future war ; a permanent character only is given to it in the manner, usual in treaties. By this convention we have relinquished a large portion of the original fishing ground, secured by the treaty of '83, at least, wherever the fishery lies within three marine miles of the coast, and as near as that the laws of nations would permit us to go. On Newfoundland we have obtained an enlarged limit of curing and drying, but the fishery remains the same, for we before possessed a right to fish, wherever British fishermen drew the line. We have lost the bay of Chaleur fishing, so important formerly, as to confer a name on a particular description of fish as well as vessels. Another obvious consideration is, that under the present arrangement our vessels are obliged to go a greater distance than formerly, all the neighbouring grounds being forbidden. Whether the grounds, relinquished, are inferior, or exhausted, or deserted by our fishermen, are important considerations, but we believe the codfish, though migratory in its habits, pursuing its food along the shore, returns periodically with a wonderful instinct to regular haunts ;—and that the success, heretofore, attending the American fisheries, has

\* \* In the first protocol, American commissioners proposed, our people should have liberty to enter British harbours for bait.

been owing to the greater degree of enterprize, industry and economy, with which they were managed. Our fishermen have underworked the British, taking and curing the fish almost at their own doors.

The convention adjusted, in part, the northwestern boundary, which, though never matter of dispute, has remained unsettled since the first treaty of peace.

"By the second article of the treaty of 1783, the boundaries of the United States, after having been traced from the northwest angle of Nova Scotia to the most northwestern point of the lake of the woods, are pursued "from thence on a *due west* course to the river *Mississippi*, thence by a line to be drawn along the middle of the said river *Mississippi*, until it shall intersect the northernmost part of the thirty-first degree of north latitude."

"By the fourth article of the treaty of 1794, it was declared to be uncertain, whether the river *Mississippi* extended so far to the northward, as to be intersected by a line, due west from the lake of the woods, and a joint survey of the river, from one degree below the falls of St. Anthony to the principal sources of the said river and of the parts adjacent thereto, was stipulated; and if on the result of the survey, it appeared, that the river would not be intersected by the line, the parties were to regulate the boundary line by amicable negotiation, according to justice and mutual convenience, and in conformity to the intent of the treaty. This joint survey never took effect.

"By a convention, signed on the 12th of May 1803 by Mr. King and Lord Hawkesbury, but which was not ratified, it was agreed, that the boundary should be by a line from the northwest corner of the lake of the woods by the shortest line, until it touched the river *Mississippi*. Until then the *Mississippi* river had been the western boundary of the United States. The cession of Louisiana gave them a new and extensive territory, westward of that river.

"In the negotiation of 1807 between Messrs. Monroe and W. Pinkney and the Lords Holland and Auckland, there were three successive draughts of articles for settlement of this boundary. The first proposed on the British side was a line, due west from the lake of the woods, along the 49th parallel of north latitude as far as the territories of the United States extend in that quarter,



and the line to that extent was to form the boundary, with a proviso, that the article should not be construed to extend to the north-west coast of America, or to territories westward of the Stony Mountains.

"The third was agreed to by both parties, and varied from the second only by an additional clause, purporting that this should be the boundary, *as far as the respective territories of the parties extend in that quarter.*

"That convention was not ultimately concluded. At the negotiation of the peace of Ghent the 8th article of the first project, presented by the American plenipotentiaries, was a transcript from this article, last above mentioned, and the article, proposed by the British plenipotentiaries on returning the project, was the same as that, which had been first proposed by Lords Holland and Auckland, with an additional paragraph, stipulating free access to British subjects through the territories of the United States to the Mississippi, and the free navigation of that river. In the conferences that ensued, the substance of the article, so far as it regarded the boundary, was agreed to on both sides; but as the American plenipotentiaries could not accede to the additional paragraph, the article was finally altogether omitted.

"From the earnestness, with which the British government now return to the object of fixing this boundary, there is reason to believe, that they have some other purpose connected with it, which they do not avow, but which, in their estimation, gives it an importance, not belonging to it, considered in itself. An attempt was, at first, made by them at the negotiation of Ghent, to draw the boundary line from Lake Superior to the Mississippi. But as they afterwards not only abandoned that pretension, but gave up even the pretension to an article, renewing their right to the navigation of the Mississippi, it was to have been expected, they would, thenceforth, have considered this western boundary of no importance to them."—"Their projects for the line, both in the negotiation of Messrs. Monroe and Pinkney in 1806, and at Ghent in 1814, were, to take the 49th parallel of latitude from the lake of the woods, west as far as the territories of the United States extend in that direction, with a caveat against its extension to the South Sea, or beyond the Stony Mountains, upon which two observations are to be made: first, that it is uncertain, whether any part

of the lake of the woods is in latitude 49, and, secondly, that they always affected to apply the indefinite limit of extension, "*as far as the territories extend*," to the territories of the United States and not to those of Great Britain."—"The counter projects for the line on our part, therefore, at those negotiations were from the northwest corner of the lake of the woods, the point already fixed and undisputed, a line due north or south, as the case may be, to the 49th parallel of latitude, and thence along that parallel due west as far as the territories of *both parties* extend in that direction, and adopting the caveat against the extension to the Pacific, or beyond the Stony Mountains."—With the article in the negotiation of 1806 (that of Messrs. Monroe and Pinkney) relating to this boundary, was coupled a stipulation in regard to the Mississippi.—"It is agreed by the United States, that his Majesty's subjects shall have, at all times, free access from his Majesty's aforesaid territories by land or inland navigation, into the aforesaid territories of the United States to the river Mississippi, with the goods and effects of his Majesty's said subjects, in order to enjoy the benefit of the navigation of that river, as secured to them by the treaty of peace between his Majesty and the United States, and, also, by the third article of the treaty of amity, commerce and navigation of 1794. And it is further agreed, that his Majesty's subjects shall, in like manner and at all times, have free access to the waters and rivers, falling into the western side of the river Mississippi, and to the navigation of the said river."

"This negotiation was suspended by a change in the British ministry, and was not afterwards resumed. But the following observations upon the two articles, contained in a letter from Mr. Madison to Messrs. Monroe and Pinkney of 30th July 1807, show how far Mr. Jefferson, then President of the United States, had authorized those commissioners to accede to them.

"Access by land or inland navigation from the British territories, through the territory of the United States, to the river Mississippi, is not to be allowed to British subjects with their goods or effects, unless such articles shall have paid all the duties, and be within the custom house regulations, applicable to goods and effects of citizens of the United States. An access through the territory of the United States to the waters, running into the

*western side of the Mississippi, is, under no modification whatever, to be stipulated to British subjects.'*

"Such then was the state of things in relation to this interest in question at the time, when the war of 1812 broke out, and at the negotiation of Ghent the same question of boundary again occurred for adjustment. The right of the British to a line from the lake of the woods to the *Mississippi* had never been renounced: and at the last negotiation between the parties, four years after the United States had acquired Louisiana and with it all the Spanish-rights upon the *Mississippi*, the British government, in assenting to take the 49th parallel of latitude, as a substitute for the line to the *Mississippi*, had expressly restipulated for the free navigation of the river and free access to it from our territories, to both of which Mr. Monroe and Pinkney had been explicitly authorized to accede.

"Under this state of things, it had never been admitted by the British, nor could we maintain against them by argument, even that the *Mississippi* river was within our *exclusive* jurisdiction, for so long as they had a right by treaty to a line of boundary to that river, and consequently to territory upon it, they had, also, jurisdiction upon it."

We have already said, that the American commissioners at Ghent offered to recognise the permanent right of the British to the free navigation of the *Mississippi*. But in the negotiation at London in 1818 they were instructed not to agree to an article, which should bring the English in contact with that river, and the British having agreed, as it appears by the protocol of the 7th conference to omit the article, the point may be considered settled, and the claim to the navigation renounced in the same manner, though not with the like formalities, as the United States have relinquished their claim to a portion of the fisheries.

The boundary of the parallel of 49, to which both parties for some time have appeared disposed to agree, does not approach within a degree and a half of the head, or supposed source of the *Mississippi*;—this, indeed, is the original boundary, established at the treaty of Utrecht between France and England. The English, though they formerly had hunting lodges and company houses about its sources, now pos-

ness no means of reaching the river on any side, but through the territories of the United States, a very inconvenient privilege and, according to one interpretation of the treaty of 1783, permanent and not liable to be revoked. But though mischievous and troublesome to us, little value has been placed on it by them, and from the position of the hunting grounds, the course of the lakes and their possessions in the north, the navigation of the Mississippi affords them neither facilities nor temptations. Still, as the American commissioners were not authorized to allow access to the river, it would have been necessary, if the other party had insisted on the original right of '83, (which they could not well do, consistently either with the language and the propositions held and made by them at Ghent, or with their doctrines of the effects of war on treaties) to have offered an equivalent. But the matter passed off in a quiet way. The boundary is now fairly and honourably adjusted on the north and west to the Rock Mountains;—that is to say, to the 113 degree of longitude, or to the 36 degree from Washington, a point that represents the progress of the country west on the meridian of 39, without including the distance of that capital from the coast.

The next troublesome controversy will arise respecting the boundaries beyond the mountains. On account of the harbours on the coast, (particularly that formed by the Columbia) and the rivers there flowing into the ocean from the fur interior districts in the north, it is not a subject, by any means, to be disposed of in a hasty manner. For nearly fifty years we have been engaged in drawing the northern line of demarkation. The mother country has followed us closely, and with a jealous, vigilant eye, not certainly with her population, but with her claims; and as her hunters (the most approved geographers for unsettled, unexplored countries) have, for many years, been acquainted with the choicest resorts of the valuable game of those districts, with the course of rivers and portages, the trail she will pursue at her negotiations, will lead, undoubtedly, through territories, proved valuable by experience. She has, thus far, been a witness, and, in some degree, a companion of our progress nearly

across this great northern continent, and, undoubtedly, in a few years the two parties will together carry the boundary line to the Pacific, a just compliment to the spirit of trade, enterprize and perseverance of both. Great Britain still retains an empire here, which, whether remaining in her hands, or following the course of other colonies, can but spread still wider, plant still deeper the language, laws and literature, we speak, hold and possess in common. That language is fast encircling as well as covering the globe, and under the influence of the institutions, with which it is accompanied, we shall see a race of men, endowed with a degree of vigour of mind, of a masculine character, of a steadiness of purpose and of a tone of enterprize, of which, if any traces now exist, they are only to be found in monuments, whose history is unknown;—men, who will not found and rear their rule and empire so much in blood and by the sword, as by the influence and authority of a superior order of civilization.\*

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#### BOUNDARIES.

We shall take this opportunity to present a brief account of the state of the boundaries, and the condition of the negotiation relative to that subject, (for so long a time a topic of discussion and controversy) between the United States and Great Britain. It will be recollected that, by the 4th article of the treaty of Ghent, it was agreed to refer the conflicting claim to islands in the bays of Passamaquoddy and Fundy to commissioners;—by the 5th article, the northeast

\* In December 1817 Richard Rush of Pennsylvania was appointed envoy extraordinary and minister plenipotentiary to England. Mr. Bagot was succeeded in 1820, by Stratford Canning, an envoy with full powers. After Mr. Rush's return to the United States, Rufus King of New-York was, in March 1825, appointed to England as envoy and minister; he was shortly succeeded by Albert Gallatin of Pennsylvania. At the present time (September 1828) James Barbour of Virginia is the American minister in London, and Charles R. Vaughan the British in this country; he arrived here in 1826.

boundary on the river St. Croix ; by the 6th article, the northern boundary line from the river Iroquois to Lake Huron ;—and by the 7th article, the boundary line from Lake Superior to the Lake of the Woods,—also to commissioners. The several commissions have, all, terminated their duties ; that under the 4th article, by agreement ;—that under the 5th article, by a difference, which has been the subject of a late convention, and is now in the hands of agents, lately appointed ;—that under the 6th article, by agreement ; and that under the 7th article, by separate reports of the commissioners, stating the points in difference, and the extent of the line agreed on. The decision of the commissioners, under the fourth article, is in the following words :

*“ Decision of the Commissioners under the Fourth Article of the Treaty of Ghent.*

“ By Thomas Barclay and John Holmes, Esquires, commissioners, appointed by virtue of the fourth article of the treaty of peace and amity between his Britannic majesty and the United States of America, concluded at Ghent, on the twenty-fourth day of December, one thousand eight hundred and fourteen, to decide to which of the two contracting parties to the said treaty, the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Menan, in the said Bay of Fundy, do respectively belong, in conformity with the true intent of the second article of the treaty of peace of one thousand seven hundred and eighty-three, between his said Britannic majesty and the aforesaid United States of America.

“ We, the said Thomas Barclay and John Holmes, commissioners as aforesaid, having been duly sworn impartially to examine and decide upon the said claims, according to such evidence as should be laid before us on the part of his Britannic majesty and the United States, respectively, have decided, and do decide, that Moose Island, Dudley Island, and Frederick Island, in the Bay of Passamaquoddy ; which is part of the Bay of Fundy, do, and each of them does, belong to the United States of America : and we have also decided, and do decide, that all the other islands, and each and every of them, in the said Bay of Passamaquoddy, which is part of the Bay of Fundy, and the Island of Grand Menan, in the said Bay

of Fundy, do belong to his said Britannic majesty, in conformity with the true intent of the said second article of said treaty of one thousand seven hundred and eighty-three.

"In faith and testimony whereof, we have set our hands and affixed our seals, at the city of New-York, in the state of New-York, in the United States of America, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and seventeen.

"JOHN HOLMES, [SEAL]

"THOMAS BARCLAY. [SEAL]

"Witness—JAMES T. AUSTIN, Agent U. S. A.

"ANTHONY BARCLAY, *Secretary*."

The convention, concluded in reference to the 5th article, is as follows : Under that instrument, Albert Gallatin and William Pitt Preble of Maine, have been appointed agents on the part of the United States. We also take this opportunity to say, that, in the 59th number of the North American Review, the reader will find a clear and careful investigation of this important topic.

"ART. 1. It is agreed that the points of difference which have arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the treaty of Ghent, shall be referred, as therein provided, to some friendly Sovereign or State, who shall be invited to investigate, and make a decision upon, such points of difference.

"The two contracting powers engage to proceed in concert to the choice of such friendly Sovereign or State, as soon as the ratifications of this convention shall have been exchanged, and to use their best endeavours to obtain a decision, if practicable, within two years after the arbiter shall have signified his consent to act as such.

"ART. 2. The reports and documents thereunto annexed, of the commissioners appointed to carry into execution the fifth article of the treaty of Ghent, being so voluminous and complicated as to render it improbable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those reports, new and separate statements of the respective cases, severally drawn up by

each of the contracting parties; in such form and terms as each may think fit.

“The said statements, when prepared, shall be mutually communicated to each other by the contracting parties, that is to say, by the United States to his Britannic majesty’s minister or chargé d’affaires, at Washington, and by Great Britain to the minister or chargé d’affaires of the United States, at London, within fifteen months after the exchange of the ratifications of the present convention.

“After such communication shall have taken place, each party shall have the power of drawing up a second and definitive statement, if it thinks fit so to do, in reply to the statement of the other party, so communicated; which definitive statements shall also be mutually communicated, in the same manner as aforesaid, to each other, by the contracting parties, within twenty-one months after the exchange of ratifications of the present convention.

“ART. 3. Each of the contracting parties shall, within nine months after the exchange of ratifications of this convention, communicate to the other, in the same manner as aforesaid, all the evidence intended to be brought in support of its claim, beyond that which is contained in the reports of the commissioners, or papers thereunto annexed, and other written documents laid before the commission under the fifth article of the treaty of Ghent.

“Each of the contracting parties shall be bound, on the application of the other party, made within six months after the exchange of the ratifications of this convention, to give authentic copies of such individually specified acts, of a public nature, relating to the territory in question, intended to be laid as evidence before the arbitrator, as have been issued under the authority, or in the exclusive possession of each party.

“No maps, surveys, or topographical evidence, of any description, shall be adduced by either party, beyond that which is hereinafter stipulated, nor shall any fresh evidence, of any description, be adduced or adverted to, by either party, other than that mutually communicated or applied for, as aforesaid.

“Each party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the reports of the commissioners, or papers thereunto annexed, and other written documents, laid before the commission under the fifth arti-



cle of the treaty of Ghent, or of the other evidence mutually communicated or applied for, as above provided, which it may think fit.

“ART. 4. The map called Mitchell’s map, by which the framers of the treaty of 1783 are acknowledged to have regulated their joint and official proceedings, and the map A, which has been agreed on by the contracting parties, as a delineation of the water courses, and of the boundary lines in reference to the said water courses, as contended for by each party, respectively, and which has accordingly been signed by the above named plenipotentiaries, at the same time with this convention, shall be annexed to the statements of the contracting parties, and be the only maps that shall be considered as evidence mutually acknowledged by the contracting parties of the topography of the country.

“It shall, however, be lawful for either party to annex to its respective first statement, for the purposes of general illustration, any of the maps, surveys, or topographical delineations, which were filed with the commissioners under the fifth article of the treaty of Ghent, any engraved map heretofore published, and also a transcript of the above mentioned map A, or of a section thereof, in which transcript each party may lay down the highlands, or other features of the country, as it shall think fit; the water courses and the boundary lines, as claimed by each party, remaining as laid down in the said map A.

“But this transcript, as well as all the other maps, surveys, or topographical delineations, other than the map A, and Mitchell’s map, intended to be thus annexed, by either party, to the respective statements, shall be communicated to the other party, in the same manner as aforesaid, within nine months after the exchange of the ratifications of this convention, and shall be subject to such objections and observations as the other contracting party may deem it expedient to make thereto, and shall annex to his first statement, either in the margin of such transcript, map, or maps, or otherwise.

“ART. 5. All the statements, papers, maps and documents, above mentioned, and which shall have been mutually communicated as aforesaid, shall, without any addition, subtraction or alteration, whatsoever, be jointly and simultaneously delivered in to the arbitrating Sovereign or State, within two years after the exchange or

ratifications of this convention, unless the arbiter should not, within that time, have consented to act as such; in which case all the said statements, papers, maps and documents, shall be laid before him within six months after the time when he shall have consented so to act. No other statements, papers, maps, or documents, shall ever be laid before the arbiter, except as hereinafter provided.

“ART. 6. In order to facilitate the attainment of a just and sound decision on the part of the arbiter, it is agreed that, in case the said arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him, the requisition for such elucidation or evidence shall be simultaneously made to both parties, who shall thereupon be permitted to bring further evidence, if required, and to make, each, a written reply to the pacific questions submitted by the said arbiter, but no further; and such evidence and replies shall be immediately communicated by each party to the other.

“And in case the arbiter should find the topographical evidence, laid, as aforesaid, before him, insufficient for the purposes of a sound and just decision, he shall have the power of ordering additional surveys to be made of any portions of the disputed boundary line or territory as he may think fit; which surveys shall be made at the joint expense of the contracting parties, and be considered as conclusive by them.

“ART. 7. The decision of the arbiter, when given, shall be taken as final and conclusive, and it shall be carried, without reserve, into immediate effect, by commissioners appointed for that purpose by the contracting parties.

“ART. 8. The present convention shall be ratified, and the ratifications shall be exchanged in nine months, from the date hereof, or sooner, if possible.

“In testimony whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

“Done at London, the 29th day of September, in the year of our Lord one thousand eight hundred and twenty-seven.

“ALBERT GALLATIN. [L. S.]

“CHARLES GRANT. [L. S.]

“HENRY UNWIN ADDINGTON. [L. S.]

“And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged

at London, on the second day of April, one thousand eight hundred and twenty-eight, by William Beach Lawrence, Chargé d'Affaires of the United States at the court of his Britannic Majesty, and the Right Honourable Charles Grant, and Henry Unwin Addington, Esq., on the part of their respective governments :

“ Now, therefore, be it known, that I, John Quincy Adams, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled, with good faith, by the United States and the citizens thereof.

“ In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

“ Done at the city of Washington, this fifteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and of the Independence of the United States of America the fifty-second.

“ JOHN QUINCY ADAMS. [L. s.]

“ By the President :—H. CLAY, Secretary of State.”

The sixth article has, also, been settled by a decision, which is as follows :

*Decision of the Commissioners under the Sixth Article of the Treaty of Ghent, done at Utica, in the State of New-York, 18th June 1822.*

“ The undersigned commissioners, appointed, sworn and authorized, in virtue of the 6th article of the treaty of peace and amity between his Britannic Majesty and the United States of America, concluded at Ghent, on the 24th of December 1814, impartially to examine, and, by a report or declaration, under their hands and seals, to designate “ that portion of the boundary of the United States from the point where the 45th degree of north latitude strikes the river Iroquois, or Cataraqui, along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication, by water, between that lake and Lake Erie ; thence, along the middle of said communication, into Lake Erie, through the middle of said lake, until it arrives at the water communication into Lake Huron ; thence, through the middle of said water communication, into Lake Huron ; thence, through the middle of said lake, to the water communication between that lake and Lake Superior ;” and to “ decide to which of the two contracting parties the several islands, lying within the said rivers, lakes

and water communications, do respectively belong, in conformity with the true intent of the treaty of 1783;" do decide and declare, that the following described line, (which is more clearly indicated on a series of maps accompanying this report, exhibiting correct surveys and delineations of all the rivers, lakes, water communications and islands, embraced by the 6th article of the treaty of Ghent, by a black line shaded on the British side with red, and on the American side with blue; and each sheet of which series of maps is identified by a certificate subscribed by the commissioners, and by the two principal surveyors employed by them), is the true boundary intended by the two before mentioned treaties; that is to say:

"Beginning at a stone monument, erected by Andrew Ellicot, Esq., in the year 1817, on the south bank, or shore, of the said river Iroquois, or Cataraqui (now called the St. Lawrence), which monument bears south  $74^{\circ} 45'$  west, and is eighteen hundred and forty yards distant from the stone church in the Indian village of St. Regis, and indicates the point at which the 45th parallel of north latitude strikes the said river; thence, running north  $35^{\circ} 45'$  west, into the river, on a line at right angles with the southern shore, to a point one hundred yards south of the opposite island, called Cornwall island; thence, turning westerly, and passing around the southern and western sides of said island, keeping one hundred yards distant therefrom, and following the curvatures of its shores, to a point opposite to the north-west corner, or angle, of said island; thence, to and along the middle of the main river, until it approaches the eastern extremity of Barnhart's island; thence, northerly, along the channel which divides the last mentioned island from the Canada shore, keeping one hundred yards distant from the island, until it approaches Sheik's island; thence, along the middle of the strait which divides Barnhart's and Sheik's islands, to the channel called the Long Sault, which separates the two last mentioned islands from the Lower Long Sault island; thence, westerly (crossing the centre of the last mentioned channel), until it approaches within one hundred yards of the north shore of the Lower Sault island; thence, up the north branch of the river, keeping to the north of, and near, the Lower Sault island, and also north of, and near, the Upper Sault (sometimes called Baxter's) island, and south of the two small islands, marked on the

map A and B, to the western extremity of the Upper Sault, or Baxter's island; thence, passing between the two islands called the Cats, to the middle of the river above; thence, along the middle of the river, keeping to the north of the small islands marked C and D; and north also of Chrystler's island and of the small island next above it, marked E, until it approaches the north-east angle of Goose Neck island; thence, along the passage which divides the last mentioned island from the Canada shore, keeping one hundred yards from the island, to the upper end of the same; thence, south of, and near, the two small islands called the Nut islands; thence north of, and near, the island marked F, and also of the island called Dry or Smuggler's island; thence, passing between the islands marked G and H, to the north of the island called Isle au Rapid Platt; thence, along the north side of the last mentioned island, keeping one hundred yards from the shore to the upper end thereof; thence, along the middle of the river, keeping to the south of, and near, the islands called Cousson (or Tussin) and Presque Isle; thence up the river, keeping north of, and near, the several Gallop Isles, numbered on the map 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, and also of Tick, Tibbit's, and Chimney, islands; and south of, and near, the Gallop Isles, numbered 11, 12 and 13, and also of Duck, Drummond and Sheep islands; thence, along the middle of the river, passing north of island No. 14, south of 15, and 16, north of 17; south of 18, 19, 20, 21, 22, 23, 24, 25 and 28, and north of 26 and 27; thence, along the middle of the river, north of Gull island and of the islands No. 29, 32, 33, 34, 35, Bluff island, and No. 39, 44 and 45, and to the south of No. 30, 31, 36, Grenadier island, and No. 37, 38, 40, 41, 42, 43, 46, 47 and 48, until it approaches the east end of Wells' island, thence to the north of Wells' island, and along the strait which divides it from Rowe's island, keeping to the north of the small islands No. 51, 52, 54, 58, 59 and 61, and to the south of the small islands numbered and marked 49, 50, 53, 55, 57, 60 and X, until it approaches the north-east point of Grindstone island: thence to the north of Grindstone island, and keeping to the north also of the small islands, No. 63, 65, 67, 68, 70, 72, 73, 74, 75, 76, 77 and 78, and to the south of number 62, 64, 66, 69 and 71, until it approaches the southern point of Hickory island; thence, passing to the south of Hickory island, and of the two small islands lying near its southern extremity, numbered 79 and 80; thence to the south of Grand or

Long Island, keeping near its southern shore, and passing to the north of Carlton island until it arrives opposite to the south-western point of said Grand island in Lake Ontario, thence passing to the north of Grenadier, Fox, Stony, and the Gallop islands in Lake Ontario, and to the south of, and near the islands called the Ducks, to the middle of the said lake, thence, westerly along the middle of said lake, to a point opposite the mouth of the Niagara river; thence, to and up the middle of the said river, to the Great Falls; thence, up the Falls, through the point of the Horse Shoe, keeping to the west of Iris or Goat island, and of the group of small islands at its head, and following the bends of the river so as to enter the strait between Navy and Grand island; thence, along the middle of said strait, to the head of Navy island; thence, to the west and south of, and near to, Grand and Beaver islands, and to the west of Strawberry, Squaw and Bird islands, to Lake Erie; thence, southerly and westerly, along the middle of Lake Erie, in a direction to enter the passage immediately south of Middle island, being one of the eastermost of the group of islands lying in the western part of the said lake; thence, along the said passage, proceeding to the north of Cunningham's islands, of the three Bass islands and of the Western Sister, and to the south of the island called the Hen and Chickens, and of the Eastern and Middle Sisters; thence, to the middle of the mouth of the Detroit river, in a direction to enter the channel which divides Bois-Blanc and Sugar islands; thence, up the said channel to the west of Bois-Blanc island, and to the east of Sugar, Fox and Stony islands, until it approaches Fighting or Great Turkey island, thence, along the western side, and near the shore of said last mentioned island, to the middle of the river above the same; thence, along the middle of said river, keeping to the south-east of, and near, Hog Island, and to the north-west of and near the island called Isle à la Pêche, to Lake St. Clair; thence, through the middle of said lake, in a direction to enter that mouth or channel of the river St. Clair, which is usually denominated the Old Ship Channel; thence, along the middle of said channel, between Squirrel island on the south-east, and Huron's island on the north-west, to the upper end of the last mentioned island, which is nearly opposite to Point au Chênes, on the American shore; thence, along the middle of the river St. Clair, keeping to the west of, and near, the islands called Belle Rivière Isle, and the Isle aux Cerfs, to Lake Huron; thence through

the middle of Lake Huron, in a direction to enter the strait or passage between Drummond's island on the west, and the Little Manitou Island on the east; thence through the middle of the passage which divides the two last mentioned islands; thence, turning northerly and westerly, around the eastern and northern shores of Drummond's island, and proceeding in a direction to enter the passage between the island of St. Joseph's and the American shore, passing to the north of the intermediate islands, No. 61, 11, 10, 12, 9, 6, 4 and 2, and to the south of those numbered 15, 13, 5 and 1.

"Thence up the said last mentioned passage, keeping near to the island St. Joseph's, and passing to the north and east of Isle à la Crosse and of the small islands numbered 16, 17, 18, 19 and 20, and to the south and west of those numbered 21, 22 and 23, until it strikes a line (drawn on the map with black ink and shaded on one side of the point of intersection with blue and on the other with red), passing across the river at the head of St. Joseph's island, and at the foot of the Neebish Rapids, which line denotes the termination of the boundary directed to be run by the 6th article of the treaty of Ghent.

"And the said commissioners do further decide and declare, that all the islands lying in the rivers, lakes and water communications, between the before described boundary line and the adjacent shores of Upper Canada do, and each of them does belong to his Britannic Majesty, and that all the islands lying in the rivers, lakes and water communications, between the said boundary line and the adjacent shores of the United States, or their territories, do, and each of them does, belong to the United States of America, in conformity with the true intent of the 2d article of the said treaty of 1783, and of the 6th article of the treaty of Ghent.

"In faith whereof, we, the commissioners aforesaid, have signed this declaration, and thereunto affixed our seals.

"Done in quadruplicate, at Utica, in the State of New-York, in the United States of America, this eighteenth day of June, in the year of our Lord one thousand eight hundred and twenty-two.

[Signed] "PETER B. PORTER. [L. s.]

[Signed] "ANTH. BARCLAY. [L. s.]"

In regard to the seventh article, we are indebted to an intelligent friend (agent on the 6th and 7th commissions), for an account of the situation of that business :

" The commissioners made their final and separate reports under this article, in December 1827, accompanied with maps of actual survey, containing an exact delineation of the territory embraced within its limits, viz: from Lake Huron to the north-west point of the Lake of the Woods.

" The boundary, throughout this extent, is also agreed to and established, with the exception of two points of difference, which occasioned the separate instead of joint reports to the respective governments. The first point in difference is, the island in the St. Mary's river (between lakes Huron and Superior), called the Sugar or St. George's Island; and the other is the water communication which the boundary ought to follow from Lake Superior to the Rainy Lake. With these exceptions, the boundary line under the seventh article is also traced upon the maps of the commission. The island in dispute contains about 25,000 acres of land, but derives its greatest value from the fact that the channel of the river lies between it, and the British main shore, so that if it is adjudged to belong to the British, they have a control over the navigation of the river.

" The other point of difference is of greater territorial extent, but not, perhaps, of so much importance in other respects. The treaty directs that the boundary line shall be conducted "through Lake Superior, northward of the isles Royal and Philipeaux, to the Long Lake." To the northward of isle Royal it is established, but the isles Philipeaux and the Long Lake have not been identified; and thence a disagreement has arisen as to the direction the line should take from Lake Superior toward the north-west. There are three routes of water communication from Lake Superior to the Rainy Lake, where they unite and discharge into the Lake of the Woods. One is known as the Dog River route, and is the most northern; another is the St. Louis river route, and is the most southern; and the third, which is central to the two others, is known as the Grand Portage route. The American agent claimed the northern route in behalf of the United States, and adduced many maps, with other evidence, to show that the Long Lake was situated on that route. The British agent claimed the southern route by the St. Louis river; and the commissioners sustained the claims of the respective agents. A compromise was attempted, by a proposition to adopt the middle or Grand Portage route, but without success. The American commission accordingly adhered to the right of the United States to the most northern



route. Thus these two questions occurring under the 7th article of the treaty, remain for future negotiation.

"It would seem too, that these points in difference are reduced by the surveys, evidence, discussions and reports of the commissioners and agents,\* to such narrow limits, and to such mere matters of fact, that no great difficulty is to be apprehended in having them ultimately adjusted, whenever the negotiation is resumed.

"The extreme north-western point of the Lake of the Woods is declared to be latitude N.  $49^{\circ} 23' 54''$ , and longitude W.  $95^{\circ} 14' 38''$ ; so that in conformity with the treaty, this point, having been ascertained to be north of parallel  $49''$ , a line is drawn due south from it to parallel  $49''$ , on which parallel it is to be continued to the Rocky Mountains. No means have yet been taken to delineate the boundary westward from the Lake of the Woods."

We shall conclude this subject with the following remarks from the source, already mentioned, in regard to the boundary under the sixth article :

"By the adjustment of this line, great advantages have been secured to both parties, such as the right to jurisdiction over very many islands, about which doubts heretofore existed, and the consequent benefits of proprietorship. The prominent advantages which have occurred to the United States are their right to the principal islands in the Long Sault Rapids of the St. Lawrence river, confining the best navigable waters within the limits of the United States, a similar arrangement in the entrance to the river St. Clair, the right to Grand Island in the Niagara, to the Bass islands in Lake Erie, which afford the best harbour in that lake, and the right to Drummond island in Lake Huron, which the British had occupied as a military post. The advantages to the British are their right to the large island covering Kingston, in the St. Lawrence, and the small island opposite Malden, controlling the best channel of the Detroit river. The former was necessarily relinquished to obtain others of greater value to the United States; and the latter to prevent a disagreement, in compliance with the wishes of both governments."

\* The commissioners under the 6th and 7th articles were organized thus : *American*—P. B. Porter, Commissioner ; Jos. Delafield, Agent ; Donald Fraser, Secretary. *British*—Anth. Barclay, Commissioner ; John Hale, Agent ; J. Williams, Secretary.

## CHAPTER IV.

## NEGOTIATION RESPECTING COLUMBIA RIVER.

*Great distance of mouth of Columbia—Called Oregon—Reason not given—Seat of a great empire—Rock Mountains called the limits of the United States—Harbour of Columbia very important—Fur trade and fisheries—Grounds of American claim—Discovery, examination and possession—Capt. Gray enters the Columbia in 1790—Lewis and Clarke—Account of Astoria—Proposition of British commissioners in 1824—Not accepted—Boundaries in north-west remain unsettled—Convention of 1818 renewed for ten years—Sir A. McKenzie sees the Pacific in 1793, but mistakes the river—Great project of the English in regard to their fur grounds—Their empire founded in commerce.*

THE distance of the mouth of the Columbia,\* from the mouth of the Missouri, the eastern boundary of the most western state, is, in round numbers, 3,500 miles, and from Washington the distance to the same point is 4,600 miles. That consideration, in some degree, diminishes the interest the people of the confederacy feel in that portion of country. But that a great population will, hereafter, be assembled on its banks, admits of little doubt. The river, itself, is broader, and penetrates deeper into the interior than any other on the western shore of this hemisphere; the vicinity to the rich and populous portions of Asia, from which all the civilized world is now remote, and an easy access to the

\* In the bills, reported the last three and four years in Congress, the name of this river is changed into Oregon, which, we believe, in the original, signifies, river of the west. We have seen no reason given for this, especially as the other name is consecrated by long usage. Indeed, we have no recollection of seeing in any of the travellers any other term employed. Lewis and Clarke call it in one place (vol. ii. p. 384) Shocatilcan, though habitually, Columbia.

whole western coast of the two continents of America, will in all speculations on this magnificent subject, be accounted surprizing advantages. We, at once, allow that the Columbia will, at a distant time, form the principal river of a powerful dominion, and it is equally evident, that the Saxon race, which, only two or three centuries ago, landed on a few scattered and bleak points of the eastern coast, will, perhaps, in the brief course of another, expand, with its vigorous, rapid growth, entirely across the continent to the Pacific. Neither is it the most unlikely thing in the world, that they will there meet the same race of men, coming from an opposite direction, across the plains of India, though originally issuing from the same spot and stock.

In the theories of some of our statesmen on the Columbia, we have observed an intimation, that the Rock Mountains will probably form the western boundary of the United States. Here will be situated the temple of the God, Terminus, and the population, instead of ascending and flowing over the mountains on to the ocean, will roll its last and highest surf at their feet. Still, to trace the confines of this empire is to enter upon that sea, which a great poet has described, where there is perpetual darkness and no navigator has before sailed; not because its bounds and limits are not well marked out, but there is neither among ourselves, nor in the history of the people, that have gone before us, any one trace, or circumstance, that will assist us in designating its developement with the least precision. The progress of the population has already been an Arabian night. And, even, if the difficulty of maintaining the confederacy augments, as the members recede from the centre, nothing that has yet taken place, furnishes a fact or even a ground for speculation, to enable us to draw the chain where the old shall cease, and the new nation arise. The point of separation is not only the sovereign difficulty, but so greatly has the progress already exceeded all anticipations on the subject, (without either shaking or weakening the union) that, with an elasticity, certainly peculiar to this people, as well as to their institutions, their progeny, will, undoubtedly, still continue

to stretch themselves along the Yellow Stone and the Missouri, their faces turned towards the setting sun, but their feelings and sympathies following the flow of the waters.

But the Columbia is of immediate importance to this country, not so much on account of a deep interest, felt in the river and territory themselves, as for the questions with which they are connected. In that consideration are involved many difficult problems, regarding territorial rights ;—the whole system of the intercourse with the Indian tribes ;—with the fur trade, both on the north-west and in the interior,—with the Pacific ocean fisheries,—with the various and peculiar traffic, carried on with the islands in that sea ; in short, with all the commerce; we drive round Cape Horn, —with a boundary to the south on Mexico, and till within a short time, with our relations with Russia.

By the 3d article of the convention of 1818, with Great Britain it was agreed, that all territory, to the westward of the Rock Mountains, should be left open, for the space of ten years, for the use of both countries. Great Britain had, in the same year, in the month of October, peaceably restored to an American officer the settlement at the mouth of the Columbia. And Spain, by the treaty of settlement and limits of February 1819, had surrendered all claims to territory, north of the parallel of 42 degrees from the source of the Arkansas to the South sea. It will be seen under the proper head, that, in September 1821, Russia issued an Ukase, asserting on the part of that government, an exclusive territorial right to the northwest from the northern extremity to latitude 51 degrees, and interdicting the commerce and fisheries of all nations within an hundred Italian miles of the coast. Against this unexpected pretension both the United States and Great Britain immediately and with firmness protested. It will, also, be seen, that in accordance with that friendly and conciliatory spirit, that has distinguished all the transactions of the Russian government with our own, a satisfactory adjustment of this difficulty was, after a discussion slightly protracted, fortunately accomplished. There is an obvious connexion between the Russian pretensions and

those of Great Britain, and we mention the circumstance for the purpose of introducing in a distinct and intelligible form an account of the negotiations, that have taken place with the latter government on this subject, referring the reader to the chapter on Russia for the proceedings on this head with that power.

The United States, in their discussions with England, claimed an absolute right and exclusive sovereignty and jurisdiction of the whole range and extent of country, west of the Rock Mountains, from the 42d degree, the parallel, established in the treaty of February 1819 with Spain, to the 51st degree of north latitude, nearly to the bottom of Queen Charlotte's Sound. This right and title was founded on the principles of settlement, applied by the European powers to their discoveries in America. The Columbia was first seen in 1790 by the American captain Gray, who entered its mouth in the sloop Washington, a trading vessel. Gray was subsequently found there by Vancouver, and, in the instructions prepared for that celebrated navigator (now in the archives of the British admiralty), the expedition by the Washington is particularly mentioned. This fact establishes priority of discovery, and the records of a foreign nation, now urging a claim to the same country, supply incontestable proof of it. The usages of nations make no difference between discoveries by private or public vessels. It matters not, who drops the anchor, who carves the inscription, who deposits the medal, who hoists the bunting, or who buries the bottle;—mysterious and cabalistic ceremonies, that, in the greedy, grasping spirit of modern practices set apart to an exclusive ownership thousands of square miles of rivers, plains and mountains. But though often accidental, always unmeaning, they have, in all cases of European construction, constituted sovereignty. This was the right of discovery from the sea. The sources of the Columbia were first seen by Americans and its whole course explored to the Pacific ocean.\* To this form, either of discovery or examination,

\* Travels to the source of the Missouri river, with an account of the American continent to the Pacific ocean, performed by order of

neither the objection of chance or private adventure can justly be made. The expedition of Messrs. Lewis and Clarke was fitted out by the government at considerable expense for the purpose of exploring the courses of the great rivers from the Mississippi to the Pacific. Three years were devoted to the undertaking, and the service was faithfully and effectually performed.

“It had been ascertained, that the Columbia, extended by the river Multnomah to as low as 42 north, and by Clarke’s River to a point as high up as 51, if not beyond that point, and to this entire range of country, contiguous to the original dominion of the United States and made a part of it by the almost intermingling waters of each, the United States considered their title, as established by all the principles, that had ever been applied on this subject by the powers of Europe to settlements in the American hemisphere. A nation, discovering a country, by entering the mouth of its principal river at the sea coast, must, necessarily, be allowed to claim and hold as great an extent of the interior country, as was described by the course of such principal river and its tributary streams; and that the claim to this extent became doubly strong, where, as in the present instance, the same river had, also, been discovered and explored, from its very mountain springs to the sea.”

Then, in the third place, the United States possess the full advantage of a right, resting in actual possession and settlement;—a sort of sovereignty more solid and effectual, than the bottle, or bunting confers. We shall conclude this brief exposition of facts with the remark, that whatever latitude north Drake, the English navigator, in the 17th century, might have reached, this ground of claim is certainly impeached by the stipulation of the treaty of 1763, by which England agreed to make the Mississippi her western

the American government in the years 1804, 5 and 6, by Capt. Lewis and Clarke. London 1815—3d vol. 800. The principal discoveries of these intelligent and entertaining travellers, as to the course of rivers, have been incorporated in Mellish’s 1819 map of the United States.

boundary. And Cook in the last century did not see the Columbia, nor any part of the coast near it.\*

*\* An account of the American settlement of Astoria.*

"I beg leave, briefly, to state, that, contemplating to make an establishment at the mouth of Columbia river, which should serve as a place of depot and give further facilities for conducting a trade across this continent to that river, and from thence on a range of northwest coast, &c. and to Canton in China, and from thence to the United States, arrangements were, accordingly, made in 1810 for a party of men to cross the continent for the Columbia River. At the same time, I fitted the ship *Tonquin*, carrying twenty guns and sixty men, commanded by the late captain Thorn, lieutenant of the United States navy. This ship sailed in September 1810, having on board the means of making an establishment at Columbia, where she arrived on the 22d March 1811. They landed, found the natives friendly, and built a fort, erected a house, store, &c. &c. This being accomplished, captain Thorn left thirty men in possession of the place to await the party, which were to make a voyage over land; these, also, happily arrived, though not till several months after. On about the first of June captain Thorn left Columbia River with a view to make some trade on the coast, and then to return to the river, but unfortunately captain Thorn never returned. At about two hundred miles north of the Columbia he put into a bay to trade with the natives. Not attending to the precautions necessary, as he had been instructed to do, to guard against an attack, he suffered a whole tribe of Indians to come on board his ship; an attack was made, he was overpowered, fire was communicated to the magazine, the ship was blown up, and every soul on board, or near her, perished.

"In 1811 I fitted out another ship, the *Beaver*, carrying twenty guns, with a duplicate cargo of the ship *Tonquin* and sixty to seventy men. The captain (Sowle) was instructed to sail for Columbia River, and in search of the men, which were sent across the continent, as also the *Tonquin*. The *Beaver* sailed from this in October 1811, arrived in Columbia the May following, found the establishment, landed such men, goods, provisions, &c. as the establishment was in need of. My instructions to the captain were, that after supplying the establishment he should proceed to Chatka, a Russian settlement, for the purpose of trade, and then to return to Columbia, take what furs we had, and proceed to Canton and from thence to New-York. He accordingly left Columbia and most unfortunately Mr. Hunt of Trenton, New-Jersey, my chief agent, left the river with him, sailed as directed for

In accordance with these general grounds, the minister at the court of St. James proposed, in the spring of 1824, to the British plenipotentiaries, (Mr. Huskisson and Mr. Can-

the Russian settlement, effected their object, but instead of following instructions to return to Columbia, he sailed direct for Canton, leaving Mr. Hunt at one of the Sandwich Islands to await the arrival of another ship, which I had promised to send from this in 1812. The ship Beaver arrived in Canton and received there the news of war. I had sent orders to the captain to return to Astoria, but he was fearful of being captured, and remained safely at Canton till the war was over, when he came home. In consequence of the war, I found it inconvenient to send a ship in 1812, but I did send one (the Lark) early in 1813, with directions to the captain to sail for Columbia River and to stop at the Sandwich Islands for information. Being within a few days sail of those islands, the ship, in a squall of wind was upset and finally drifted on the beach of one of those islands, a wreck, ship and cargo totally lost. Here was met Mr. Hunt, who, after all the information he received, and my great desire to protect the establishment of Columbia River, procured an American vessel, took some provisions, sailed and arrived at Columbia River. Here he learnt that Mr. McDougall had transferred all my property to the Northwest Company, who were in possession of it, by a sale, as he called it, for the sum of about \$58,000, of which he retained \$14,000 for wages, said to be due to some of the men. From the price obtained for the goods, &c. and he having, himself, become interested in the purchase, and made a partner in the Northwest Company, some idea may be formed as to this man's correctness of dealing. It will be seen by the agreement, of which I transmit a copy, and the inventory, that he sold to the Northwest Company 18,170 1-4 lbs. of beaver at \$2, which was, at about that time, selling in Canton at \$5 and \$6. 907 Otter skins at 50 cents or half a dollar, which were selling at Canton at 5 to \$6 per skin.

"I estimated the whole property to be worth nearer \$200,000 than \$40,000, about the sum which I received by bills on Montreal. Previous to the transaction of McDougall, we had already established trading ports in the interior, and were in contact with the Northwest Company. It is now to be seen, what means have been used by them to counteract my plan. It is well known, that as soon as the Northwest Company had information of my intentions and plan for conducting my commercial operations, they despatched a party of men from the interior with a view to arrive before my people at Columbia.



ning) that the third article of the convention of 1818 should be extended for a term of ten years, embracing a stipulation on the part of Great Britain, that, during the aforesaid term, no settlements should be made by their subjects on the northwest, or islands adjoining, either south of the 51st degree, or north of the 55th, the United States entering into the same agreement on their part.

Neither the proposition of the American envoy, nor the principle, arguments, or facts, by which it was vindicated, met with the least favourable countenance from the British ministers;—the one was absolutely declined, the other as fully denied. In the opinion of that government, the whole of the northwest, from the 42d degree, was still open to colonization.\* They neither yielded to the exclusive claim of the United States as to territory, nor were they prepared to relinquish the system of settlement, hitherto practised in all portions of the continent, not yet occupied. The validity of

These men were obliged to return, without effecting their object. In the mean time representation was made to their government, as to the probable effect of my operations on their interest, and requesting to interfere in their behalf. This being in time of peace, the government did not deem it advisable so to do. Soon, however, as war was declared, these representations were renewed, aid was asked from the government, and it was granted. The *Phœbe* frigate and sloops of war *Raccoon* and *Porcupine* were sent from England with orders to proceed to Columbia River and destroy my property. They sailed from England early in January 1813: arriving at Rio de Janeiro, admiral Dickson ordered the *Phœbe* frigate with one of the sloops to pursue captain Porter in the frigate *Essex*, and the sloop of war *Raccoon* to the Columbia. She arrived there, took possession in the name of the king, and changed the name of the place Astoria to Fort George. Previous to this, the Northwest Company had despatched another or second party of men to the Columbia. They arrived there in the absence of Mr. Hunt. McDougall gave them support and protection, and they commenced after some time to negotiate with this gentleman."

\* Charter of Louis XIV. to Crozat, "all the country drained by the waters emptying directly or indirectly into the Mississippi" is declared to be comprehended within the limits of Louisiana.

the discovery by Gray was disputed, as not including all the territory, through which the river flows, whose mouth he entered ; particularly, this principle could not be made to extend to portions of the coast above and below the Columbia, both discovered and explored by expeditions under Captain Cook, prior to the voyage of Gray. Great Britain had, also, made purchases of territory of the natives, a few degrees north of the Columbia, before America existed as an independent power, and upon that river, or upon rivers flowing into it, west of the Rock Mountains, her subjects had formed settlements, at least as early as the American settlement at its mouth. And though a priority of some of the Spanish discoveries on a portion of that coast could not be denied, the pretensions of Spain to forbid colonization and commerce along the whole reach of the shores, according to the spirit of her colonial laws, had always been resisted, particularly at the negotiations concerning Nootka Sound in 1790 ; nor could it ever be allowed, that their pretensions to territories, north of the 42d degree, had been transferred to the United States by the treaty of 1819 with Spain. This exposition was followed by a counter proposition on the part of the British commissioners in April 1823 ;—that the third article of the convention of 1818 should now be at an end ;—that the boundary line between the two parties, westward of the Rock Mountains, should be drawn due west along the 49th parallel of latitude, to the point where it strikes the northeasternmost branch of the Columbia, and then down the middle of the Columbia to the Pacific, the navigation of the river being, forever, free to both parties, and that the subjects and citizens of the respective countries should not be allowed to form settlements within the territories, assigned to each other. But this arrangement, not being satisfactory to the American commissioners, the matter still remains subject to negotiation. The convention of 1818 was renewed at London in the summer of 1827 by Mr. Gallatin for ten years without alteration, so that the question of boundary and limits on the west is not yet settled.

In 1793, Sir Alexander M'Kenzie was sent by the British

government from Canada to explore the sources of the Columbia ;—he missed that river, fell in with another, called the Tacoutche Tesse, and, at last, reached the Pacific 500 miles north of the mouth of the Columbia, which captain Gray had entered three years before. This expedition was of a commercial nature, and laid the foundation of the present scheme, the British government are striving to execute, part of which is, already, accomplished, viz. a continuation of their hunting grounds from Canada to the Pacific,—an establishment of a chain of forts from sea to sea,—the possession of the fur trade from the parallel of 45 north, and the exclusive possession west of the Rock Mountains. This is an outline of the plan, and to its full and efficient performance the waters of the Columbia are indispensable. It is understood, that the English already hold a monopoly of the best as well as largest portions of fur grounds in the west on both sides the mountains, and it is, also, said that they have, still, actual possession of the settlement, (called Astoria) and made by the Americans at the mouth of the Columbia, as well as the whole country, drained by that river. The post, it is true, was formally delivered in 1818, to Mr. Prevost, but, being carried there in a British vessel of war, and having no men with him to take possession, the business resulted in a formal, amicable exchange of receipts and remonstrances. It is now called Fort George, has the British flag upon its flag staff,—a British garrison ; and is the first, on the west, of that long line of posts, that extend 3000 miles to the east, along the northern portion of this country. This project belongs to the great commercial system of the British government, obviously connected with the designs, they have already accomplished in obtaining the best mercantile positions in other quarters of the globe, particularly in Asia.—The empire of the English is founded in commerce ; other great dominions have been founded in arms ;—they have not proved very durable, and whether the same fate shall attend the British or not, it will always be a most agreeable reflection, that commerce, under any circumstances, tends to civilize, refine and improve the condition of men.

## CHAPTER V.

## TREATY OF 1819 WITH SPAIN.

*Napoleon releases Ferdinand from Valancay—Letters of Napoleon and Ferdinand—Erving attempts a negotiation with Cevallos—Various delays practised by Spain—Burlesque blockade of part of South America—Pizarro—Grants of land in Florida to Spanish subjects—Treaty of 1819 negotiated at Washington between Adams and de Onís—Grants of land, an evasion of it—Forsyth sent to Spain—King refuses to ratify treaty—No reason assigned—Warm correspondence—Vives sent to this country—No authority to ratify—Demands explanations as to privateers and recognition of South American provinces—United States extremely dissatisfied—Refuse explanation or discussion—European powers endeavour to persuade Spain to a ratification—Refuse, on account of unwillingness to have South America acknowledged—Policy of England, France and Russia—Design on Cuba—Delays again practised by Spain—Statement of the grant to Alagon, &c.—Include best part of Florida—Spain, at length, ratifies—And cancels the grants—Vives complains of Forsyth's letter of protest—Nelson, minister to Madrid—Anduaga to Washington—Piracies in West India seas—Vexations and disgraceful—Spain unable to protect her own coasts—President proposes to Congress to pass a law, authorizing blockade of Cuba—Rejected—Dangerous measure—Navy very active and successful in suppressing piracies—Everett, minister in Spain—Tacon in U. States—Negotiations with Spain next in importance to those with mother country—Mississippi—Florida—Louisiana—Indemnity of \$5,000,000, to U. States—Spain in a state of decay—Diplomatic intercourse for the future, probably of slight moment.*

As early as October 1813, the English and allied forces, approaching from the south, under the command of the Duke of Wellington, had crossed the Bidassoa, and taken a position on French territory. In the same month was fought

the battle of Leipsic, and in the course of the autumn, the French armies (with the exception of garrisons) were all pushed back across the Rhine into France, and as the winter closed in, that country was perceived, literally, to be encompassed and enveloped by hostile troops. In this juncture of affairs, the Emperor Napoleon addressed a letter from St. Cloud, dated Nov. 12, 1813, to Ferdinand, King of Spain, who had been detained his prisoner since 1808, and, at that time, resided at the castle of Valancay, not far distant from the Loire :

“My Cousin—The condition of my empire and my policy induce me to put an effectual end to the state of affairs in Spain. England is exciting in that country anarchy and jacobinism.—She is striving to overthrow the throne and the nobility for the purpose of establishing a republic. I cannot, without great emotion, reflect on the destruction of a nation, which interests me both by its vicinity and our mutual interest, respecting the commerce of the ocean. I am desirous of renewing the relations of good neighbourhood and friendship, that have so long existed between France and Spain, and of depriving England of every opportunity for the exercise of ambitious projects. M. the Count de la Forrest will present himself to your Royal Highness under a feigned name.\* Put full confidence in any thing, he may say, as well as in the esteem and attachment, I have invariably entertained for you. My Cousin, having no other object in writing this letter,—I pray God to grant a long life to your Royal Highness.”

Ferdinand having refused to treat, without consulting the regency of Spain, wrote to Napoleon Nov. 24, in the following terms :

“Sire—I have received, by the hands of M. de la Forrest, the letter, your Majesty has done me the honour to address me on the 12th of this month. I take this opportunity to express my gratitude to your Imperial Majesty for proposing, by your intervention, to put an end to the troubles in Spain. Your Majesty informs me, that England is there exciting anarchy and jacobinism, and seeking to overthrow the throne of my family, and that your Majesty can-

\* He took the name of Dubosque.

not contemplate this state of confusion without a lively emotion of interest. I adhere to the answer, made verbally to M. de la Forrest. Neither my respect nor my attachment to your Imperial Majesty have diminished: but you have caused me to be conducted to Valancay, and I have ceased to exercise my control over the Spanish nation. I now claim to be heard by a deputation from the regency of that kingdom, who will give me accurate information on the state of the nation,—point out suitable remedies for the existing evils, and consolidate our union in the eyes of my subjects. If the condition of your empire and the policy of your Majesty induce you to reject these propositions, I shall still continue to remain at Valancay, where I have now been five years and a half, and where I shall die, if God so pleases. It is painful for me to express myself in this manner, but my conscience demands it. I feel an equal interest in the French and the English, but I prefer my own people to both. I am well pleased with M. de la Forrest, who, in watching over your interests, has not departed from the respect which is due to me.—May God give you many days, &c.”

This letter exhibits spirit, sagacity and firmness; and, warmed by the perusal of it, several political writers have paid Ferdinand a compliment, which no other part of his history or conduct, at all, justifies or confirms. It is much more likely, that the King and his attendants, notwithstanding the care, with which they were guarded, were well acquainted with the state of things, and looked forward to a speedy release on terms, more agreeable than those, proposed by the agent of the Emperor. Some diplomatic arrangements were, however, undertaken by the aid of the Duke St. Carlos, but before being completed, Ferdinand and the Infantas received permission to return to Spain without condition or stipulation. Their passports were delivered in March 1814, and they returned to their own country a few days only before Napoleon Bonaparte signed, himself, the act of his first abdication. A treaty was subsequently concluded at Paris, in July 1814, between Spain and France, consummating the great changes, that had taken place during the year, and restoring Spain, with all her rights and dignities, to the European family, as well partially to the inti-

mate and family relations, which had formerly subsisted between these two branches of the house of Bourbon.

We shall now proceed directly with that portion of public affairs, that relates especially to this country. At the end of a former chapter, it has already been stated that in 1814, George W. Erving was appointed a minister to Madrid.—This envoy was invested with full powers and instructions to come to a definitive arrangement on the points in dispute ;—by no means a pleasing occupation, considering the nature of our complaints, and the dispositions of the Spanish government. These grievances, on the part of the United States, were many of them of ancient date, and all of importance. They consisted : 1, in a demand for indemnity for suspending the right of deposit at New Orleans : 2d, for the refusal of Spain to settle the boundaries on just principles : 3d, spoliations on commerce distributed in two classes—American vessels seized by Spanish cruisers, and those seized by French, but carried into Spanish ports and there condemned by French consuls. In the summer and autumn of 1816, Mr. Erving entered into a correspondence with the Spanish minister Cevallos on the subject of his instructions, but he was informed, the negotiation had been transferred to Washington, and that the minister here, was furnished with full powers to that effect. But when the Secretary of State at home entered into this business with Don Luis de Onis, it turned out, his powers were not full,—that he was authorized to discuss, but not to conclude a convention upon a single topic in controversy. This proceeding was, perhaps, not altogether unexpected, at least, not novel, and was adopted either for delay, or, because Cevallos was desirous of avoiding the labour of a negotiation. On the other hand, the Spanish minister in this country showed himself equally dexterous in the mode of managing the affair,—and in 1817, at a time, when the American government absolutely refused longer to discuss subjects, perfectly understood and agreed on by both parties, sent his Secretary of Legation, Don Luis Noeli, to Madrid to obtain more ample and precise instructions. The

only result of this arrangement was a renewal, in the beginning of 1818, of a most voluminous argument on the boundaries of Florida and Louisiana. No formal propositions were made, and the correspondence confined to subjects, already exhausted and settled, or complaints relating to violations of neutrality by South American privateers. We find that about this period (January 1818) the government proposed to the Chevalier de Onis to terminate all the differences on the following terms :

1. Spain to cede all territory eastward of the Mississippi.
2. The eastern boundary to be marked by the Colorado.
3. Claims for indemnities for spoliation, whether Spanish or French in Spanish jurisdiction, or for suppression of deposite to be referred to commissioners.
4. The lands in East Florida and to the Perdido to be held as a security for these indemnities, but that no grant of land prior to August 11, 1802, should be considered as valid.
5. Spain to be released from the payment of the debts.

During this vexatious, unprofitable discussion, American vessels suffered great inconvenience from arbitrary blockades, established by Morillo during 1815 and 1816, along the coasts of the ancient viceroyalty of Santa Fe, and between the mouths of the Magdalen and Cape Tiburon on the Musquito shore. Under these severe regulations vessels were liable to capture at a great distance from the coast, of which several hundred miles were declared in blockade, enforced only by two or three small vessels.

The assaults on neutral commerce had scarcely ceased in the old world, when they were renewed with fresh animosity in the new by a power, not only destitute of all naval armament, but not even in a condition to maintain its own independence and sovereignty. By the Spaniards these decrees were regarded as municipal regulations, or a revival of the ancient laws of the Indies, which forbade (though relaxed in modern times) any vessel to trade with the Spanish colonial dominions without a special license. So severe and extreme was this prohibition, that a vessel, found near the



Spanish coasts, or even shaping her course for them was subject to confiscation. The Spaniards, also, justified the decrees on the ground, that American vessels, by clearing, in general, for the West Indies, and not for a specified port, enjoyed abundant opportunities of driving a contraband trade. Heavy losses were sustained in consequence of these blockades, and though they were suspended in September 1816, tranquillity having been restored in the province of Santa Fe, a mission of Mr. Hughes to Carthagena, to endeavour to recover the vessels and property, was not attended with success. And to the representations of the American minister at Madrid no satisfactory answers were returned.

Having disposed of this matter of the blockades, the Spanish minister Pizarro, before he suffered the secretary of legation, Don Luis Noeli, to return, attempted to draw Mr. Erving into a discussion, with the professed object of concluding a convention, even while the negotiation should be going on at Washington. This proposition was declined by the envoy as his government considered all further discussion unavailing, and the negotiation had been regularly committed to other hands; but he signified to the Spanish secretary, that, if the terms of a convention were communicated, he would, at once, declare, whether they fell within the reach of his instructions, or would offer a counter project. To allow time to the Spanish minister to propose the outline of a convention, the departure of Noeli, with instructions for Don Luis de Onis, was again delayed. And in August 1817, Pizarro communicated to Mr. Erving the project of "9 articles of arrangement;"—but on the first blush, they were deemed inadmissible, for Spain asserted claims, both of government and subjects, for excesses and injuries committed by individual American citizens, posterior to the convention of 1802, which never had been communicated to the American government; and, also, required, that the United States should renounce its claim on Spain for spoliations, committed by French vessels in Spanish jurisdiction. This transaction closed the discussion at Madrid.

While the negotiation was going on at Washington for a transfer of the Floridas, rumours reached the country, that

the king of Spain had made large grants of land in that territory. These alarming and embarrassing reports, confirmed by letters from the American minister, related to extensive grants to the Duke of Alagon, captain of the king's guard,—the Count of Punon Rostro, chamberlain, and Don Pedro de Vargas, treasurer of the royal household. They included a large portion of the land, proposed by Spain to be ceded to the United States as indemnity for the claims of this government;—a singular business, and a novel and unexpected expedient for rendering the cession cheap. These instruments, from their loose, vague and sweeping expressions, will remind the reader of the charters the first Charles delivered to the early settlers of this country. We shall shortly recite the substance of them in a letter of the American minister, so that those, who will be at the pains to examine, may see what small portion of Florida was reserved for American citizens, whose property had been sequestered for the benefit of Spain, or her allies. It will be observed that Don Luis de Onis received his full power to negotiate in 1816, and that the transfer of the Floridas to the United States had been under consideration several months, before these cessions of territory were made. They took place in the spring of 1818, and the American minister had immediate information of the fact, of which he sent, without delay, notice to his government. In October 1818, the Spanish minister proposed to the secretary of state, to “cede in full property and sovereignty”—“the provinces of East and West Florida,”—“*the donations or sales of land made by the government of his Majesty or by legal authorities until this time are, nevertheless, to be recognised as valid.*” On the other hand, the American government gave early and full notice to Spain, that either the grants must be cancelled, or other indemnity provided for American citizens.

Having presented this brief relation of a transaction, somewhat difficult to explain in a manner altogether honourable to Spain, we shall proceed to the convention, concluded shortly after with M. de Onis by the secretary of state, though we shall have occasion again to introduce the subject

of the grants. This instrument, a treaty of amity, settlement and limits, was finally signed on the 22d February 1819,\* and may be regarded as a full and entire adjustment

\* "With this intention the president of the United States has furnished with their full powers John Quincy Adams, Secretary of State of the said United States; and his Catholic Majesty has appointed the most excellent lord Don Luis de Onís, Gonzales, Lopez y Vara, Lord of the town of Rayaces, perpetual Regidor of the Corporation of the City of Salamanca, knight grand cross of the royal American order of Isabella the catholic, decorated with the Lys of La Vendée, knight pensioner of the royal and distinguished Spanish order of Charles the Third, member of the supreme assembly of the said royal order, of the council of his Catholic Majesty; his secretary, with exercise of decrees, and his envoy extraordinary and minister plenipotentiary near the United States of America.

"And the said plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

"ART. 1. Firm and inviolable peace and friendship.

"ART. 2. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States duly authorized to receive them.

"ART. 3. The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or *Red River*; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being, as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January 1818. But, if the source of the Arkansas river shall be found to fall north or

of all accounts and concerns with Spain. It is short, but as its title denotes, is truly one of the most satisfactory in the

south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers, Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

"The two high contracting parties agree to cede and renounce all their rights, claims and pretensions, to the territories described by the said line, that is to say: the United States hereby cede to his Catholic Majesty, and renounce forever, all their rights, claims and pretensions, to the territories lying west and south of the above described line; and, in like manner, his Catholic Majesty cedes to the said United States, all his rights, claims and pretensions, to any territories east and north of the said line; and for himself, his heirs and successors, renounces all claim to the said territories forever.

"ART. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year, from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated, and the line of latitude 42, to the South Sea: they shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

"ART. 5. The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction; and all those who may desire to remove to the Spanish dominions, shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties.

collection, considering either the amount, nature and antiquity of the claims, the disputed and perplexed condition of

"ART. 6. The inhabitants of the territories which his Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities, of the citizens of the United States.

"ART. 7. Spanish troops to be withdrawn, and possession given within six months after the exchange of ratifications, &c. United States to furnish transports for the troops, &c. to the Havana.

"ART. 8. All the grants of land made before the 24th of January 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January 1818, when the first proposal, on the part of his Catholic Majesty, for the cession of the Floridas was made, are hereby declared, and agreed to be, null and void.

"ART. 9. The two high contracting parties, animated with most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claims for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this treaty.

"The renunciation of the United States will extend to all the injuries mentioned in the convention of the 11th of August 1802.

"2. To all claims on account of prizes made by French privateers, and condemned by French consuls, within the territory and jurisdiction of Spain.

"3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans, in the year 1802.

"4. To all claims of citizens of the United States upon the government of Spain, arising from the unlawful seizures at sea, and in the ports and territories of Spain, or the Spanish colonies.

the boundaries, or the vexatious and protracted character of the negotiation. We are still obliged to detain the reader

"5. To all claims of citizens of the United States upon the Spanish government, statements of which, soliciting the interposition of the government of the United States, have been presented to the Department of State, or to the minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty.

"The renunciation of his Catholic Majesty extends:

"1. To all the injuries mentioned in the convention of the 11th of August 1802.

"2. To the sums which his Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

"3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New-York.

"5. To all claims of Spanish subjects upon the government of the United States, arising from unlawful seizures at sea, or within the ports and territorial jurisdiction of the United States.

"Finally, to all the claims of subjects of his Catholic Majesty upon the government of the United States, in which the interposition of his Catholic Majesty's government has been solicited, before the date of this treaty, and since the date of the convention of 1802, or which may have been made to the Department of Foreign Affairs of his Majesty, or to his minister in the United States.

"And the high contracting parties, respectively, renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

"The United States will cause satisfaction to be made for the injuries, if any, which, by process of laws shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida.

"ART. 10. The convention entered into between the two governments, on the 11th of August 1802, the ratifications of which were exchanged on the 21st December 1818, is annulled.

"ART. 11. The United States, exonerating Spain from all demands in future on account of the claims of their citizens, to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of these claims, a commission to consist of three commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the senate, which com-

with a further account of this tedious history. One would suppose, that an instrument could not have been expressed

mission shall meet at the city of Washington, and within the space of three years from the time of their first meeting, shall receive, examine and decide upon the amount and validity of all the claims, included within the descriptions above mentioned. The said commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent discharge of their duties; and, in case of the death, sickness, or necessary absence, of any such commissioner, his place may be supplied by the appointment, as aforesaid, or by the President of the United States, during the recess of the senate, of another commissioner in his stead. The said commissioners shall be authorized to hear and examine, on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the laws of nations, and the stipulations of the treaty, between the two parties, of 27th October 1795; the said documents to be specified when demanded, at the instance of the said commissioners.

"The payment of such claims as may be admitted and adjusted by the said commissioners, or the major part of them, to an amount not exceeding five millions of dollars, shall be made by the United States, either immediately at their treasury, or by the creation of stock bearing an interest of six per cent. per annum, payable from the proceeds of sales of public lands within the territories hereby ceded to the United States, or in such other manner as the Congress of the United States may prescribe by law.

"The records of the proceedings of the said commissioners, together with the vouchers and documents produced before them, relative to the claims to be adjusted and decided upon by them, shall, after the close of their transactions, be deposited in the Department of State of the United States, and copies of them or any part of them, shall be furnished to the Spanish government, if required at the demand of the Spanish Minister in the United States.

"ART. 12. The treaty of limits and navigation, of 1795, remains confirmed in all and each one of its articles, excepting the 2, 3, 4, 21, and the second clause of the 22d article, which, having been altered by this treaty, or having received their entire execution, are no longer valid.

"With respect to the 15th article of the same treaty of friendship, limits and navigation, of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this

in clearer or more precise terms, or have been more fully and exactly understood by the parties. But a fatality appears

shall be so understood with respect to those powers who recognise this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose government acknowledge this principle, and not of others.

“ART. 13. Deserters to be delivered up on proof, &c.

“ART. 14. The United States hereby certify that they have not received any compensation from France, for the injuries they suffered from her privateers, consuls and tribunals, on the coasts and in the ports of Spain, for the satisfaction of which provision is made by this treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same, in such manner as she may deem just and proper.

“ART. 15. The United States, to give to his Catholic Majesty a proof of their desire to cement the relations of amity subsisting between the two nations, and to favour the commerce of the subjects of his Catholic Majesty, agree that Spanish vessels, coming laden only with productions of Spanish growth or manufactures, directly from the ports of Spain, or of her colonies, shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, in the Floridas, without paying other or higher duties on their cargoes, or of tonnage; than will be paid by the vessels of the United States. During the said term, no other nation shall enjoy the same privileges within the ceded territories. The twelve years shall commence three months after the exchange of the ratifications of this treaty.

“ART. 16. The present treaty shall be ratified in due form, by the contracting parties, and the ratifications shall be exchanged in six months from this time, or sooner, if possible.”

We add at the end of this note, a copy of the treaty concluded in 1802 at Madrid, by Mr. Pinckney with Don Pedro Cevallos. The king of Spain refused, without any reason, to ratify this instrument till 1818, and though it finally became a treaty in the usual forms, it was never executed.

“His Catholic Majesty and the government of the United States of America, wishing amicably to adjust the claims which have arisen from excesses committed during the late war, by individuals of either nation, contrary to the laws of nations or the treaty existing between the two countries: his Catholic Majesty has given, for this purpose, full powers to his excellency Don Pedro Cevallos, counsellor of state, gentleman of the bed chamber in employment, first secretary of state



to have accompanied all our transactions with Spain. The ratification of the treaty, an act required by its own provision

and universal despatch, and superintendent general of the posts and post offices in Spain and the Indies; and the government of the United States of America to Charles Pinckney, a citizen of the said States, and their minister plenipotentiary near his Catholic Majesty; who have agreed as follows:

"1. A board of commissioners shall be formed, composed of five commissioners, two of whom shall be appointed by his Catholic Majesty, two others by the government of the United States, and the fifth by common consent; and in case they should not be able to agree on a person for the fifth commissioner, each party shall name one, and leave the decision to lot: And hereafter, in case of the death, sickness, or necessary absence, of any of those already appointed, they shall proceed in the same manner, to the appointment of persons to replace them.

"The appointment of commissioners being thus made, each one of them shall take an oath to examine, discuss and decide, on the claims, which they are to judge, according to the laws of nations and the existing treaty, and with the impartiality justice may dictate.

"3. The commissioners shall meet and hold their sessions in Madrid, where, within the term of eighteen months (to be reckoned from the day on which they may assemble) they shall receive all claims, which, in consequence of this convention, may be made, as well by the subjects of his Catholic Majesty as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them, in consequence of the excesses committed by Spanish subjects or American citizens.

"4. The commissioners are authorized, by the said contracting parties, to hear and examine, on oath, every question relative to the said demands, and to receive, as worthy of credit, all testimony, the authenticity of which cannot reasonably be doubted.

"5. From the decisions of the commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims, as to the amount of the indemnification which may be adjudged to the claimants; the said contracting parties obliging themselves to satisfy the said awards in specie, without deduction, at the times and places pointed out, and under the conditions which may be expressed by the Board of Commissioners.

"6. It not having been possible for the said plenipotentiaries to agree upon a mode by which the above mentioned Board of Commis-

to be performed in six months, was delayed by his Catholic Majesty, under various pretexts, for nearly two years, a circumstance infinitely harassing to all creditors under the 9th article, and amounting to nothing less than so much money taken out of their pockets in the shape of interest.

In the spring of 1819,\* John Forsyth of Georgia was appointed minister plenipotentiary to Spain ;—his general instructions were in these words :

“ The treaty of amity, settlement and limits, between the United States and Spain, concluded on the 22d ultimo, and ratified on the part of the United States, having provided for the adjustment of all important subjects of difference between the two nations, the first object of your mission will be to obtain the ratification of the Spanish government, and receive it in exchange for ours, the authentic instrument of which is committed to your charge. The United States ship *Hornet*, Capt. Read, is in readiness in Boston, and orders have been despatched, under which you will take passage for Cadiz. It is desirable that you should embark without delay. On your arrival in Spain, the *Hornet* will remain in Cadiz subject to your orders, until the exchange of the ratifications can be effected. And if, as is anticipated, no obstacle should intervene to delay that transaction, you will, upon receiving the Spanish rati-

tioners should arbitrate the claims originating from the excesses of foreign cruisers, agents, consuls, or tribunals, in their respective territories, which might be imputable to their two governments, they have expressly agreed that each government shall reserve (as it does by this convention) to itself, its subjects or citizens, respectively, all the rights which they now have, and under which they may hereafter bring forward their claims, at such times as may be most convenient to them.

“ 7. The present convention shall have no force or effect until it be ratified by the contracting parties, and the ratification shall be exchanged as soon as possible.

“ Done at Madrid, this 11th day of August 1802.”

“ NOTE.—Ratified, by the President and senate, on the 9th Jan. 1804; and by the king of Spain on the 19th July 1818.”

\* After Don Luis de Onis left this country, M. de la Serna became a chargé d'affaires.

ned copy, immediately forward it to Capt. Read, with directions to bring it immediately to the United States. As the ulterior destination of the *Hornet* will be the Gulph of Mexico, the port to which it will be advisable for him to come, will be New-York.

“ On exchanging the ratifications, certificates of the fact will be mutually executed and delivered by you and the Spanish minister, with whom you will make the exchange. Copies of that, which passed in both languages on the exchange of the ratifications of the convention of the 11th August 1802, are now furnished you, and will serve as forms to be used in the performance of this ceremony. On this occasion, as upon all others, upon which you may have occasion to execute any document, joint, or reciprocal, with a foreign minister of state, you will be careful to preserve the right of the United States to the *alternative* of being first named, and your own right, as their representative, to sign first in the papers executed; while, in the counterparts, the other contracting party will be named first, and the foreign minister will first sign and seal. A rigid adherence to this practice has become necessary, because it is strictly adhered to by all the European sovereigns in their compacts with one another; and because the United States having, heretofore, foreborne to claim this conventional indication of equal dignity, some appearance of a disposition to allege the precedent against them, as affecting their right to it, was manifested by the British plenipotentiaries on executing the convention of 3d July 1815, and M. de Onis at the drawing up and signing of this treaty.—The scruple was, however, in both cases abandoned, and the right of the United States to the *alternative* was conceded. It is not expected that it will, hereafter, be questioned, and you will consider it as a standing instruction to abide by it in the execution of any instrument of compact, which, as a public minister of the United States, you may be called to sign.

“ After the exchange of the ratifications, your attention will be directed to the object of carrying the provisions of the treaty into effect. The orders for the evacuation by the Spanish officers and troops of the places, occupied by them in the Floridas, will, no doubt, be immediately issued, and as the transports and escort for conveying them to the Havana are to be furnished by the United States, it is hoped you will obtain copies of the orders and transmit them here with the ratification of the treaty. You will think it

advisable to keep the Spanish government reminded of the necessity to include in the orders for the delivery of possession, that of all the archives and documents, relating to the dominion and sovereignty. The appointment of a commissioner and surveyor for running the line of the western boundary must, also, be kept in remembrance, and notice given to us, as soon as possible, after their appointment. You will collect from the archives of the legation at Madrid all the documents, relating to the claims of citizens of the United States upon the Spanish government, which have been deposited there, and which come within the description of claims to be exhibited to the commissioners under the 11th article of the treaty. You will send all these documents, together with the ratified treaty, to this department, retaining descriptive lists of them, and, if necessary, copies of such papers, for which no equivalent substitute could be produced in case of their being lost. Should you have reason to believe that any documents, which you should be able to specify, were in possession of the Spanish government, tending to elucidate any of these claims, you will endeavour to obtain them. The treaty provides, that they shall be furnished at the demand of the commissioners. But as much time may be saved, if they can be sent here to be ready when the commission will be organized and commence the exercise of its functions, you will, should the occasion present itself, use your endeavours to that effect."

Immediately on his arrival in May, Mr. Forsyth proposed to the Marquis of Casa y Rujo to make an exchange of the ratifications of the treaty as soon as the leisure of the Spanish Secretary of State would admit.—After an interval of several weeks he received a short reply, in which it was intimated to him, that "his majesty, on reflecting on the great importance and intent of the treaty in question, is under the indispensable necessity of examining it with the greatest caution and deliberation, before he proceeds to ratify it."—And it soon after appeared, that the king had determined to send a special commissioner to the United States for the purpose of obtaining explanations on some parts of the instrument.—The nature of the explanations has never been known, nor the parts of the treaty, to which they applied.

It may, however, be well imagined, that the individuals, whose vast grants were cancelled by one of the articles, would exercise all their influence to delay or defeat the ratification. We have seen a suggestion, that a Mr. Toledo was sent to London in the summer of 1819, to endeavour to procure a loan, for the purpose of paying the claims, recognised by the treaty, and to ascertain, whether Great Britain would make a common cause with Spain in a war with the United States. We have, however, the declaration of Lord Castlereagh, that no individual of that name, or on that business, ever made his appearance, and besides, we possess an authentic assurance, that England advised Spain to a ratification. We shall take this opportunity, also, to state that both France and Russia used their influence to have this important transaction satisfactorily arranged. Nor can any doubt be entertained, but that the conduct of his Catholic Majesty, on this occasion, met with the disapprobation of these governments. We give an extract from a despatch of December 1819, from Count Nesselrode to Mr. Polletica, Russian minister in this country :

“ You doubtless have been able to obtain information, how far the president's last instructions to Mr. Forsyth were positive. The emperor will not now take it upon him to justify Spain, but he charges you to plead with the government at Washington the cause of peace and concord. That government is too enlightened to take hasty steps, and its rights appear to be too solid, not to be weakened by a violent course of proceeding : and on the other hand, such is the character of the considerations, which command the ratification by Spain of the arrangement, relative to the Floridas, that, it is hoped, she will, at length, yield to the force of evidence. The United States will then have added to the reputation of an able, that of a moderate policy, and will gather with security the fruits of wisdom.

“ His Imperial Majesty, therefore, wishes that if there be yet time, you would engage the government at Washington to give to the Spanish ministry a proof of patience, which its circumstances might indeed seem to suggest. Nevertheless, the emperor does not interpose in this discussion. He makes above all no preten-

sion to exercise an influence in the councils of a foreign power. He merely expresses a wish, dictated by his concern for the general welfare, and worthy of the generous, good faith, which characterises the government of the United States."

From this passage and other indications of the European courts at the time, some uneasiness was obviously felt, lest the United States should resent the delay of Spain, and take possession of the Floridas by force. To France and Russia, members of the Holy Alliance, time, repose and tranquillity were still necessary to confirm and consolidate the new political arrangements of the continent, and to establish, far beyond the shock of revolutions, or the contagion of liberal systems, the celebrated principle of legitimacy, oriental and ancient in its effects and application, but, in its origin and in its present garb and shape, altogether modern and European. The armies of occupation were just beginning to withdraw from France,—a portion were directing themselves, across the Alps, to the plains of Lombardy, ready, at a moment's warning, to form in order of battle upon those celebrated fields of battle, that may be compared to a vast colysseum, where the royal gladiators of Europe have so often descended to terminate their quarrels in the presence of the world;—another portion were pursuing their long march towards the regions, bordering on Tartary, and watered by the Wolga and the Borysthenes, there to hold themselves in a permanent course of exercise and discipline, prepared to pour back again upon Europe, whenever convulsions or disaffections should shake or enfeeble the thrones of the sovereigns. On the other hand, England, solely occupied in preserving and augmenting her wealth and power, referring every question to a commercial standard, holding within her own bosom the undivided, as well as undisputed authority, that regulated, sustained, nourished and defended the disjointed portions of her empire, at once foresaw, that the first hostile act, on the part of the Americans, would necessarily take place in the neighbourhood of Cuba. To maintain that island in the hands of third parties, it cannot be doubted, that the British government, in the years 1819, 20, prefer-

ed negotiation to war, and urged by the same general considerations with France and Russia, could not but have expressed displeasure at the refusal of Spain to ratify.

This transaction is, we believe, without a precedent in the diplomacy of the United States. The government has refused to ratify treaties,—other nations, with whom we have negotiated, have exercised the same privilege, but never without a reason, perhaps, not in all cases satisfactory to the opposite party, but, at least, bearing upon its face some sort of defence and justification. One of the principal objects of Mr. Forsyth's mission to Madrid was to execute the usual formalities, required by the occasion.—It will, therefore, be no matter of surprise, if the extraordinary refusal of the king excited indignation, as well as astonishment. Having received instructions to remonstrate against the delay of Spain in ratifying the treaty, he addressed a long letter, on the 18th October 1819, to the first minister of state, the duke of San Fernando and Quiroga, from which we shall make some extracts.

“Your excellency will pardon me for saying, that I am shocked at the assertion now made, that the declaration, intended to be presented at the exchange of ratifications, annuls the said article, as it obliges me to conclude, that the grants to the duke of Alagon, the count Punon Rostro and Mr. Vargas are, in the opinions of this government, of a date prior to the 24 January 1818, the date named in that article of the treaty, and that the government of Spain believes itself authorized to insist, that they would be valid under it. This disclosure compels me, from the duty I owe to my country, and in obedience to the instructions, I have received, earnestly to remonstrate against the conduct of Spain in relation to these grants, a conduct towards the United States injurious, unjust and deceptive, and which cannot fail, when made known, to excite the resentment of all nations, who prize honourable dealing and love of good faith.

“The possession of Florida has long been a matter of interest to the United States, a land useless and expensive to his Catholic Majesty, and chiefly valuable by its position to them. Ever since the restoration of his Majesty to the throne of Spain, the question

of the cession of that territory has been agitated. In the summer or autumn of 1817, after the determination to negotiate all matters in dispute at Washington, it is presumed, authority was given to Mr. Onís to offer the Floridas for an equivalent to the United States. In July 1817 Mr. Pizarro informed Mr. Erving, that the instruction for Mr. Onís was preparing. Comparing the date of the offer of cession made by that minister of the 24 January 1818, with the time necessary for transmitting the instructions, under which it was made, the conclusion is, that, prior to November 1817, the authority was given to Mr. Onís to offer *Florida* to the United States, according to the instructions, preparing by Mr. Pizarro, at the date of his communication to Mr. Erving of the 27 July 1817. In November following, the prospect of a cession to the United States, having made property in that territory valuable, petitions were presented to his Majesty for grants of land in Florida by the duke of Alagon and count Punon Rostro. In December 1817, the king decided by royal orders, that these petitions should be allowed, and in February 1818, the royal letters patent were issued to the petitioners in the council of Indies.

“The donation to the duke of Alagon included all the uncultivated land in East Florida, not previously ceded, between the margins of the rivers St. John and St. Lucia, to their entrances into the sea and the coast of the Gulph of Florida, and the adjacent islands, the mouth of the river Hijuelos from the 26° of latitude, following its left bank to its source; thence by a line drawn to the lake of Macayo; thence by the way of the river St. John to the lake Valdes, thence by a line, cutting the extreme north of that lake, as far as the source of that river, and by the coast of the sea, with all adjacent islands to the mouth of the river Hijuelos.

“To the count Punon Rostro was granted all the uncultivated lands, not before ceded, in East Florida, which are situated between the Rio Perdido to the West Gulph of Mexico and the rivers Amasuca and St. John, from Popa to its mouth, and the southern boundary line of the United States and the Gulph of Mexico, with all the uninhabited islands near the coast.

“About the close of 1817, or beginning of 1818, Mr. Vargas petitioned for lands in Florida. On the 25 January 1818, a royal order allowed his petition, and the cedula is of the date of the 9th April 1818.



"The donation to Mr. Vargas was—1st. All uncultivated and not before ceded, lands, between the bay of Mobile, the river Rio Perdido, the boundary line of the United States and the Gulph of Mexico.

"2d. All the lands, lying south of Alagon's grant, from the mouth of Hijuelos on the Gulph of Mexico, and the mouth of St. Lucia on the Gulph of Florida with all the islands, &c.

"3d. All lands in West Florida, to which Spain was entitled, and all lands in dispute with the United States.

"While these extraordinary and enormous donations were making in Spain, Florida had been offered to the United States, and the terms of cession were in course of adjustment. After great labour and delay the negotiation terminated by the convention of 1819. To provide an indemnity for the claims of American citizens upon Spain, some of which were acknowledged in 1804 to be just, (although the treaty providing for their adjustment, and payment made in that year, had been but just ratified with Spain) was one of the causes of the cession of Florida, in full property to the United States, who engaged to pay their own citizens out of the vacant lands in that territory, but it was previously necessary to ascertain that the fund, provided, was sufficient for that purpose. Mr. Onis insisted in his note of the 24th October 1818, that all grants, made prior to that date, should be held valid. The answer of the Secretary of State of the 31 October, is, that the United States cannot renounce their claims upon Spain and those of their citizens, and at the same time recognise all grants as valid. He says to Mr. Onis, 'notice had been given by the minister of the United States in Spain to your government, that all the grants of land, lately alleged to have been made by your government within those territories, must be cancelled, unless your government should provide some other adequate fund, from which the claims, above referred to of the United States and their citizens, may be satisfied.'"

On the 16 November Mr. Onis proposes,

"That *the late grants*, made since the date of this note, offering a cession, should be declared null and void, in consideration of the grantees not having complied with the essential conditions of the cession, as had been the fact. The late grants, as was explicitly understood by both the negotiators and can only be so understood,

referred to the large grants of land to Alagon, Punon Rostro and Vargas, respecting which notice had been given by Mr. Erving to Mr. Pizarro. When, after the signature of the treaty, a rumour prevailed, that the grants to Alagon, Punon Rostro and Vargas were valid under the treaty, being dated but a short time before the 24 of January 1818, and that this date was assumed with the intention, that they should be confirmed; without admitting the suspicion of any unfair dealing in the conduct of the negotiator of Spain, that no pretence should by any possibility be raised after the ratification of the treaty, that these grants were confirmed, or that either party to the compact had understood, that they would be confirmed, I was instructed to deliver, on the exchange of ratifications, the declaration of the construction, it was the avowed intention of both parties at the signature, that the 8th article should bear in relation to the grants in question, and the only one the United States would ever admit. In a correspondence of March 1819 between Mr. Adams and Mr. Onis, the Spanish minister unequivocally admits, that such had been his understanding of the article when he signed it—a fact fully confirmed by the declaration of M. Hyde de Neuville.”——“A territory, which had almost been abandoned for years by the government of Spain, alternately used by the British troops, the Indians and the blacks for the annoyance of the United States, which had been left to be preyed upon by every adventurer, who could command a pilot boat and a musket, becomes, at the moment it is to be ceded away, an object of parental solicitude, a solicitude discovered by giving monopolies of lands to three persons, who affected the intention to cultivate and improve them,—an intention, established by the notorious fact of these lands having been frequently offered for sale by the claimants in Spain and in the United States. It is somewhat singular, that the Spanish minister in the United States, who, in the whole of the negotiation, professed the most perfect readiness to stipulate, that they should be given up, should yet be ignorant of the dates of these donations, and should have arranged an article in respect to grants, so as to leave room for a pretence that the large donations were valid. How happened it, that he was thus ignorant, he whose knowledge of these instruments the United States relied on, and they could rely upon no other? How did it occur, that in the short space of twelve days after the signature of the treaty, the information was

given to satisfy him, that he might have been mistaken in the belief with regard to their dates? I reject the supposition, that all this was diplomatic finesse, intended to secure the large donations to the claimants of them, but refer to this circumstance to prove still more clearly, how injuriously Spain has acted with the United States in this business. The allegation, that the American government ought not to have relied upon information, derived from the minister with whom they were negotiating, will never be urged by Spain. The American government could not procure authentic information from any other source, and if a mistake had been made from a reliance upon that, which was procured, a just and honourable government would disdain to take any other advantage of it than that of manifesting its good faith by its cheerfulness and promptitude in correcting the error, fulfilling the intention, instead of the letter, of its engagement. In fine, sir, the injustice of this transaction has been perfected by the influence, these donations appear to have had in preventing the ratification of the convention of 22d February 1819, a convention, which settled important interests, secured the pacific and harmonious relations between the United States and Spain, provided indemnities for injuries, Spain acknowledged our citizens had suffered from her, removed all causes of future dispute and difficulty, and laid deep and broad the foundation of a permanent, good understanding between the two powers. Such, sir, has been the conduct of Spain. She offered a cession and endeavoured to render it worthless, she proposed indemnities, and attempted to destroy the fund, out of which they were to be made. To do this, she abandoned her ancient, territorial policy, and assigned reasons for her conduct, which could not have regulated it. Her negotiator acted as if he knew of facts, of which he subsequently professed himself to have been ignorant, and, in consequence, made an arrangement, which laid the foundation of new embarrassments between this government and that of the United States, and because the United States frankly avow its resolution to do, what it engaged to do, I am told, that their example justifies Spain in an indefinite delay of a determination to accept, or reject that arrangement. In whatever light this transaction is viewed, grievous injury has been done to the United States, for which they have a right to demand and obtain satisfaction. Having thus experienced its necessity and propriety, your excellency must not be

surprised if the United States, in future, take pledges of security for the performance of any engagements, they may enter into with Spain more effectual than confidence in her good faith."

This letter the Duke refused to submit to the King, though an answer was not returned till the twelfth of the following month.

"I have perused with due attention your note of the 18th ult. and although I wished, on reflecting on the friendly sentiments entertained by the King, my master, for your government, and on those, which, on my part, I have for it, and for yourself personally, to have found them reciprocated in your note, since I had every reason to be persuaded, from what had passed in our conference on the third of the same month, that they really existed, I have, notwithstanding, to regret, that my expectations have unfortunately been disappointed. So far, indeed, is your note from exhibiting those feelings, that it gives me extreme concern only to discover in it ideas, which seem wholly incompatible with the principles, professed by your government, and expressed in terms (since I am compelled to say so) equally unprecedented and repugnant to the delicacy and attention, which are peculiar to, and are invariably observed in all diplomatic communications. I should have failed in the very high consideration I owe to the American government, in the due respect I entertain for you, as the principal Secretary of the King, my Lord, by communicating to him the contents of a note, which attacks the honour of his Majesty, without tending in the least to elucidate the subject in question. Upon it the King will, in a direct course, demand of, and give to the federal government the requisite explanations, as I have already had the honour more than once to inform you. It is, therefore, with the greatest concern, that it becomes my indispensable duty to return to you such a note, with the assurance that I will, with as great pleasure, promptitude and eagerness, submit to his Majesty such communications, as you may address to me, which are conceived in fit and becoming terms, as I am wholly averse to laying before him those, which cannot fail to prove offensive to his exalted character and sovereign dignity."

A short time before the remonstrance was presented, the American minister requested of the Secretary of State and

Despatch authenticated copies of the grants. This was refused with some slight expression of sensibility.

“The Duke of San Fernando and Quiroga presents his compliments to Mr. John Forsyth, minister plenipotentiary of the United States of America, and has the honour to inform him, that, having made known to the King, his Lord, the wish of Mr. Forsyth to obtain authentic copies of the grants of land, made to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas, his Majesty has declared, that it is not possible for him to comply with this wish, without being wanting in what is due to his dignity, as he conceives, that his word alone, in the matter of the grants, is, in addition to their publicity, the most authentic certificate, that can or ought to be given.”

We have made these extracts for the purpose of showing the nature of the grants as well as of exhibiting a delicate point of negotiation ; but the return of Mr. Forsyth's letter of protest and remonstrance was not accompanied with any inconvenience, separate from those, that result from an absence of friendly and unreserved intercourse. No formal complaint was ever presented by the Spanish government, nor was any farther notice taken of the transaction, than is contained in a paragraph of a letter of General Vives to the Secretary of State. On the contrary, in December 1819 the Duke of San Fernando and Quiroga signified to Mr. Forsyth in an official manner, that the King had appointed General Vives to proceed to America as his minister, invested with full powers, and possessing the entire confidence of the government, and gave it as his opinion, that the negotiation should thenceforward be suspended at Madrid. The term for ratification, allowed by the treaty, having expired, and the whole discussion having been transferred to another quarter, Mr. Forsyth obtained, in the spring of 1820, on his own solicitation, permission to return to the U. States.

General Vives arrived in Washington in April 1820, Don Luis de Onis having been recalled on account of the state of his health. He exhibited a copy of his full powers, in-

serted below,\* and after declaring that he was not the bearer of a ratification of the treaty, he submitted for the con-

\* "Don Ferdinand, the seventh, by the grace of God, King of Castile, Leon and Arragon, of the two Sicilies, Jerusalem, Navarre, Grenada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the Algarves, Gibraltar, the Canary Islands, of both Indies and of the Isles of the Ocean; Archduke of Austria, Duke of Burgundy, Brabant and Milan, Count of Hapsburg, Flanders, Tivol and Barcelona, Lord of Biscay and of Molina, &c. &c. &c.

"The state of peace, amity and good understanding, now happily subsisting between Us and the United States of North America, being favourable to the mutual and amicable adjustment and settlement of all existing differences between the two governments, and it being expedient to that end, to authorize a person, having our confidence, and possessed of the requisite information, experience and political knowledge for so important a trust: which qualities, uniting in you, Don Francisco Dionisio Vives, a Major General in our service, a Knight of the Royal and Military order of St. Ferdinand and member of the supreme council of the said order, a Knight of the Royal and Military order of St. Hermenegildo, twice honoured by decrees of thanks for public services, decorated with the order of North Star and crosses of honour for distinguished conduct and valour at the battles of Albuera, Serauron, Lugo, Tamenes and Medina del Campo, the surrender of Villa Franca del Vierzo, in the operations of the army of the left at the sieges of Pampeluna and Bayonne, and our envoy extraordinary and minister plenipotentiary to the above named states.

"We have authorized and by these presents We do authorize you, granting you full power in the most ample form, to meet and confer with such person or persons, as may be duly authorized by the government of the United States, and with him or them to settle, conclude and sign whatever you may judge necessary to the best arrangement of all points, depending between the two governments, promising, as we do hereby promise upon the faith and word of a King, to approve, ratify and fulfil such articles or agreements, as you may conclude and sign.

"In testimony whereof, I have commanded the present to be issued, signed by us, sealed with our privy seal and countersigned by the undersigned, our principal Secretary of State and of universal Despatch. Given at Madrid the 15th of December 1819.

"I, THE KING."

sideration of this government three positions or topics, upon which he desired to be furnished with explanations.

"That the United States, taking into due consideration the scandalous system of piracy, established in and carried on from several of their ports, will adopt measures, satisfactory and effectual, to repress the barbarous excesses and unexampled depredations, daily committed upon Spain, her possessions and properties, so as to satisfy, what is due to international rights, and is equally claimed by the honour of the American people.

"That in order to put a total stop to any future armaments, and to prevent all aid whatsoever being afforded from any part of the Union, which may be intended to be directed against and employed in the invasion of H. C. Majesty's possessions in North America, the United States will agree to offer a pledge, that their integrity shall be respected.

"And, finally, that they will form no relations with the pretended governments of the revolted provinces of Spain, situate beyond sea, and will conform to the course of proceeding, adopted in this respect by other powers in amity with Spain."

These propositions naturally awakened surprise, concern and indignation, and formed a fit, becoming epilogue to a transaction, that, in the outset, assuming (to use the mildest term) the air of neglect or indifference, now bore the marks of obvious evasion.

"The minister of the United States," said the Secretary of State in reply, "at Madrid was enabled and offered to give all the *explanations*, which could justly be required in relation to the treaty. Your government declined, even, to make known to him their character, and they are now, after the lapse of more than a year, officially disclosed by you.

"I am directed by the President to inform you, that explanations, which ought to be satisfactory to your government, will readily be given upon all the points, mentioned in your letter of the 14th inst. but that he considers none of them in the present state of the relations between the two countries as points for *discussion*. It is indispensable, that, before entering into any new negotiation between the United States and Spain, that relating to the treaty, already signed, should be closed. If, upon receiving the *explana-*

tions, which your government has asked, and which I am prepared to give, you are authorized to issue orders to the Spanish officers, commanding in Florida, to deliver up to those of the United States, who may be authorized to receive it, immediate possession of the province, conformably to the stipulations of the treaty, the President, if such shall be the advice and consent of the Senate, will wait (with such possession given) for the ratification of his Catholic Majesty, till your messenger shall have time to proceed to Madrid. But if you have no such authority, the President considers it would be at once an unprofitable waste of time, and a course, incompatible with the dignity of this nation, to give explanations, which are to lead to no satisfactory result, and to resume a negotiation, the conclusion of which can no longer be deferred."

"With regard to your *proposals*, it will be proper to observe, that his Catholic Majesty, in announcing his purpose of asking *explanations* of the United States, gave no intimation of an intention to require new articles to the treaty. You are aware, that the United States cannot, consistently with what is due to themselves, stipulate new engagements as the price of obtaining the ratification of the old. The declaration, which Mr. Forsyth was instructed to deliver at the exchange of the ratifications of the treaty, with regard to the eighth article, was not intended to annul, or in the slightest degree to alter or impair the stipulations of that article; its only object was to guard your government, and all persons, who might have had an interest in any of the annulled grants, against the possible expectation or pretence, that those grants would be *made valid* by the treaty. All grants, subsequent to the 24 January 1818, were declared to be positively null and void and Mr. Onís always declared, that he signed the treaty, fully believing, that the grants to the duke of Alagon, count Punon Rostro and Mr. Vargas were subsequent to that date. But he had in his letter to me of 16 November 1818 declared, that those grants were null and void, because the essential conditions of the grants had not been fulfilled by the grantees. It was distinctly understood by us both, that no grant of whatever date should be made valid by the treaty, which would not have been valid by the laws of Spain and the Indies, if the treaty had not been made. It was, therefore, stipulated, that grants prior to the 24 January 1818, should be confirmed only, "to the same extent that the same grants would be valid, if the



territories had remained under the dominion of his Catholic Majesty." A single exception to the principle, that the treaty should give no confirmation to any imperfect title, was admitted, which exception was, that owners in *possession of lands*, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, had been *prevented* from fulfilling *all* the conditions of their grants, should *complete* them within the terms limited in the same from the date of the treaty. This had obviously no reference to the above mentioned grants, the grantees of which were not in possession of the lands, who had fulfilled none of their conditions, and who had not been *prevented* from fulfilling any of them by the circumstances of Spain, or the revolutions of Europe. The article was drawn up by me, and before assenting to it, Mr. Onís enquired what was understood by me as the import of the terms, "shall complete them." I told him, that in connexion with the terms, "all the conditions," they necessarily implied, that the indulgence would be limited to grantees, who had performed *some* of the conditions, and who had commenced settlements, which it would allow them to complete. These were precisely the cases, for which Mr. Onís had urged the equity of making a provision, and he agreed to the article, fully understanding, that it would be applicable only to them. When, after the signature of the treaty, there appeared to be some reason for supposing, that Mr. Onís had been mistaken in believing, that the grants to the duke of Alagon, count Punon Rostro and Mr. Vargas were subsequent to the 24 January 1818, candour required, that Spain and the grantees should never have a shadow of ground to expect, or allege that this circumstance was at all material in relation to the bearing of the treaty upon those grants. Mr. Onís had not been mistaken in declaring, that they were invalid, because their conditions were not fulfilled. He had not been mistaken in agreeing to the principle, that no grant, invalid as to Spain, should by the treaty be made valid against the United States. He had not been mistaken, in the knowledge, that those grantees had neither commenced settlements, nor been prevented from completing them by the circumstances of Spain, or the revolutions in Europe. It was not, therefore, to annul or to alter, but to fulfil the eighth article, as it stands, that the declaration was to be delivered, and it is for the same purpose that this explanation is now given. It was with much

satisfaction, therefore, that I learned from you the determination of your government to assent to the total nullity of the above mentioned grants."

In a subsequent letter of Don Dionisio Vives the conduct of the American minister at Madrid is commented on, and an intimation broadly expressed, that enquiries were purposely withheld from him.

"In my first note, I, also, hinted at the offensive terms, employed by the American minister at Madrid from the very outset."——

"Although his Majesty might certainly have kept aloof from a deportment, so void of moderation and so derogatory to his dignity, it is obvious, that any discussions, commenced with the minister, so situated, were only likely to produce unprofitable results, his correspondence tending more powerfully to disunite than to reconcile the contracting parties. It was, indeed, a subject of great regret, that the incident just referred to, the distance of Spain from the new world, which, from the obstructions to correspondence, produced unavoidable delay, in receiving correct information of the events passing here, and, which to his Majesty appeared incredible, and in fine, his wish to avoid whatever had the appearance of an unfounded complaint, and an unpleasant difference between the two governments, should have retarded my arrival and the happy conclusion of the transaction now pending."

The affair of the Spanish treaty presents a singular, though by no means complicated problem. The instrument was certainly obligatory upon Spanish faith and honour, but it cannot be considered a perfect one, as the act of ratification is an essential ingredient. The United States possessed a complete right, in the great chancery of nations, to take justice into their own hands; and exact a full indemnity for all delay, loss and damage. A court of equity compels an individual to hold himself to his bargain, when he seeks to escape under a formality of the law, but a nation, not enjoying the advantage of possessing a tribunal, to which an appeal can be offered, is driven to the painful necessity of seeking redress in a resort to arms.

"The treaty of 22d February 1819, was signed, after a succession of negotiations of nearly twenty years' duration, in which all the

causes of difference between the two nations had been thoroughly discussed, and with a final admission on the part of Spain, that there were existing just claims on her government, at least, to the amount of five millions of dollars, due to citizens of the United States, and for the payment of which provision was made by the treaty. It was signed by a minister, who had been several years residing in the United States, in constant and unremitted exertions to maintain the interests and pretensions of Spain, involved in the negotiation. —Signed, after producing a full power, by which in terms, as solemn and as sacred as the hand of a sovereign can subscribe, his Catholic Majesty had promised to approve, ratify and fulfil whatever should be stipulated and signed by him.”——“The express authority of two of the most eminent writers upon national law to this point were cited in Mr. Forsyth’s letter of 2d October 1819, to the duke of San Fernando. The words of Vattel are, ‘But to refuse with honour to ratify that, which has been concluded in virtue of a full power, the sovereign must have strong and solid reasons for it, and *particularly he must show*, that his minister transcended his instructions.’ The words of Martens are, ‘Every thing, that has been stipulated by an agent, in conformity to his full powers, ought to become obligatory for the state from the moment of his signing, without ever waiting for the ratification. However, not to expose the state to errors of a single person, it is now become a general maxim, that public conventions do not become obligatory, until ratified. The motive of this custom clearly proves, that the ratification can never be refused with justice, except when he, who is charged with the negotiation, keeping within the extent of his public full powers, has gone beyond his secret instructions, and, consequently, rendered himself liable to punishment, or when the other party refuses to ratify.’”——“After a lapse of more than a month from the time of Mr. Forsyth’s first note, and of more than two months from the time, when the Spanish government had received the treaty, with knowledge that it had been ratified by the United States, the ratification of a treaty, which his Catholic Majesty had solemnly promised, (so that it might be exchanged within six months from the date of its signature, or *sooner if possible*) was withheld merely to give time to his Catholic Majesty to examine it; and this treaty was the result of a twenty years’ negotiation, in which every article and subject, contained in it, had been

debated and sifted to the utmost satiety between the parties, both at Washington and Madrid;—a treaty, in which the stipulations by the Spanish minister had been sanctioned by successive references of every point to his own government, and were, by the formal admission of your own note, fully within the compass of his instructions.

“If, under the feeling of such a procedure on the part of the Spanish government, the minister of the United States appealed to the just rights of his country in expressions, suited more to his sense of its wrongs, than to the courtesies of European diplomacy, nothing had till then occurred, which could have restrained the Spanish government from asking of him any explanation, which could be necessary for fixing its determination upon the ratification.”

One circumstance may be followed in an obvious and distinct course throughout the whole of this business,—the desire and necessity of delay on the part of the Spanish government. The mode, in which the treaty itself was negotiated, and the final manner of its ratification are all, at once, explained by the single, ready, unfailing resort of a Spanish diplomatist.

For the last fifty years, Spain had appeared to hold no other weapon of defence, no other process of negotiating than procrastination. Without power or spirit to repel or resist the series of calamities, with which she has been menaced, she has, at least, indulged herself in the full enjoyment of putting off to the last hour evils, that have steadily pursued her in her feeble and declining course.

On the present occasion, this diplomatic cipher can easily be read. Spain was probably acquainted with the propositions, made by the agents of the South American government to the United States, as well as with a proposition, made by this government to Great Britain in 1819, to recognise the independence of a portion of Buenos Ayres. During the negotiation for the treaty of February 1822, de Onís and Pizarro both endeavoured to obtain a pledge, that this government would not acknowledge those provinces, and, even if a recognition could not ultimately be suppressed, Spain had some reason to apprehend, it would take place immediately

on a ratification of the treaty ;—an instrument by no means hastily or incautiously framed and concluded by her minister, but to which that country was actually driven by a well grounded fear, that the United States would shortly enter the Floridas by force, justly irritated by an indemnity for spoliation and injuries, so long and so unreasonably withheld. The recent expedition of General Jackson into the territory may have been regarded as the first step in that important, alarming movement. It, also, afforded abundant evidence, that only a very slight resistance could be offered to an entire and rapid occupation of the whole province. The safety of the Floridas had become hopeless, but it was an object of great magnitude to delay the effects, both in Europe and in the Spanish provinces themselves, which an acknowledgment by the United States would infallibly produce.

Spain did not play a profound, nor even a skilful game on this occasion. She is indebted to the apparent and temporary success of it entirely to the determined, pacific policy of the United States, to the friendly and becoming representations of some of the European powers, and to the injuries our commerce would suffer, not certainly from Spain, but from the depredations of privateers of all nations under the haughty flag of Castille and Arragon, converting the shores of the Mediterranean and the West India seas, into the dens and recesses of red rovers and buccaneers. In a memoir, published at Madrid by the minister, M. de Onis, concerning this negotiation, the refusal of the Spanish government is attributed to an apprehension, that England would take advantage of the cession of the Floridas, as a plea to occupy Cuba. There seems to be very little foundation for this assertion, for we possess in an authentic shape the assurances of that government, that her influence had been exerted to induce Spain to ratify, and several of her plenipotentiaries and ministers declared in a solemn manner, that no desire was entertained to disturb the present relations or condition of possessions in that quarter.

While General Vives was in this country, news was re-

ceived of the revolution of the government of Spain, and soon after he communicated to the Secretary of State an official copy of the oath of the King to the Constitution, and of an address to his subjects. These events have been so frequent in Europe of late, that they have now lost all novelty, and, hardly, retain any interest. The business no farther affected the United States, than by suspending the functions of the Spanish minister ; and this government having resolved to wait the issue of the events in Spain, matters remained in a tranquil, stationary condition, till October 1820, when the Cortes resolved, with few dissenting voices, to advise Ferdinand to ratify the treaty. This was done by the King on the 24th of the month, after an attempt, to obtain from Mr. Forsyth some modification in the 8th article respecting the grants, had failed. The ratifications of this important treaty were, at last, exchanged on the 22d February 1821, by General Vives and the Secretary of State, precisely two years after it was signed. A declaration was attached to it by Spain, setting forth that the grants to Alagon, Punon Rostro and Vargas remained annulled and cancelled.

John James Appleton was left by Mr. Forsyth in care of the affairs of the legation at Madrid. In the spring of 1823, Hugh Nelson of Virginia succeeded as envoy and minister to that embassy. This mission was principally occupied with the distressing, disgraceful subject of piracies in the West India seas, and the practice of granting commissions to privateers at Porto Cabello on the main and at the Spanish islands of Cuba and Porto Rico. The renewal of the war in Venezuela, and the burlesque blockade of twelve hundred miles of coast by a frigate, a brig and schooner, employed, at the same time, in transporting supplies and military stores from Curacao to Porto Cabello, were the pretences, equally an outrage on neutrality and humanity, under which a swarm of privateers, issued from the main and islands, committing numerous depredations on all neutral commerce, but more especially of this country and Great Britain. It is difficult to say, whether the lawful trade of the world has suffered most injury in those quarters from pro-

fessed pirates, or acknowledged privateers. The latter subject led to an extremely angry correspondence between the Spanish minister and the Secretary of State in consequence of the capture of some of those freebooters, by public armed vessels of this country. This minister, the successor of General Vives, was Don Joaquin de Anduaga, who does not appear to have left a favourable impression behind him, especially on account of the harsh manner, in which he treated the business of pirates and privateers.

"In reflecting upon the conduct of this minister during his residence in the United States, it has been impossible to avoid the suspicion, that it has been instigated by a disposition, not more friendly to the existing liberal institutions of his own country, than to the harmonious intercourse, to which they were so well calculated to contribute between the United States and Spain.

"From the time of the reestablishment in Spain of a constitutional government, the sympathies of this country have been warm, earnest and unanimous in favour of her freedom and independence. The principles, which she asserts and maintains, are emphatically ours, and in the conflict, with which she is now threatened, for supporting them, a cordial good understanding with us was as obviously the dictate of her policy, as it was the leading principle of ours. This national sentiment has not been silent or unobserved. It was embodied and expressed in the most public and solemn manner in the message to congress at the commencement of their last session. The conduct of the government has been invariably conformable to it. The recognition of the South American governments, flowing from the same principle, which enlisted all our feelings in the cause of Spain, has been in its effects a mere formality. It has in no wise changed our actual relations either with them or with Spain. All the European powers, even those, which have hitherto most strenuously denied the recognition in *form*, have treated and will treat the South Americans as independent in fact. By his protest against the formal acknowledgment, Mr. Anduaga had fulfilled his duties to his own government, nor has any one circumstance arisen from that event, which could require of him to recur to it as a subject of difference between us and Spain again. We have not been disposed to complain of his protest, nor

even of his permanent residence at a distance from the seat of government. But the avidity with which he has seized upon every incident, which could cause unpleasant feelings between the two countries, the bitterness, with which his continual notes have endeavoured to exasperate and envenom the misrepresentations of others, which he has so precipitously assumed as undeniable facts, and the language in which he has vented his reproaches upon the fair honourable characters of our naval officers, upon the government and even the people of the union, are indications of a temper, which we can trace to no source, either of friendly feeling towards our country, or of patriotic devotion to his own. It has the aspect of a deliberate purpose to stir up and inflame dissensions between the United States and Spain: to produce and cherish every means of alienation and distrust between them, with ultimate views to the counteraction of these differences upon the internal administration and government of his own nation.

- "It is hoped, that he will in no event be permitted to return hither, and in the full and just explanations, which you will now be enabled to give upon every complaint, exhibited by him, while here, the Spanish government will be satisfied with the justice, and convinced of the friendly disposition towards Spain, which have governed all our conduct."

During several years this government was under the necessity of maintaining a squadron of small vessels in the West India seas for the suppression of piracies. This was a vexatious service and, on account of the climate, extremely fatal. Every man of feeling could not but lament the sacrifice of so many valuable lives in a business, where little glory could be earned, though great dangers and difficulties were encountered. We have, however, a sincere gratification in adding, that by the intrepidity and perseverance of the navy, these banditti have finally been extirpated.

In 1822, 3 appropriations were made to enable the executive to send a sufficient force to these seas. Under this authority in February 1823 a squadron of seventeen vessels was despatched upon the service. This duty was effectually performed, and in December of the same year, the Secretary of the Navy stated in an official document, that "Pira-



cy as a system had been suppressed in the neighbourhood of the Island of Cuba.”—But in the succeeding years, the vessels having been driven from their cruising grounds by a fatal pestilence, or employed on other services, these atrocities and outrages were renewed with fresh and alarming desperation. Spain, appearing entirely incompetent to suppress the pirates, and afford along its own shores a sufficient protection to a lawful neutral commerce, the President recommended, in the beginning of the second session, eighteenth Congress, (1824, 5) the adoption of a more efficient and determined system. Besides an augmentation of small vessels, “the pursuit of the offenders to the settled, as well as unsettled part of the island, reprisals on the property of the inhabitants, and a blockade of the island, from which the pirates issued.”—A bill embracing two of these provisions was reported in one of the Houses of Congress.

“That if any of the said pirates should escape from the fresh pursuit of the commanding officers and crews of any armed vessel of the United States, and find refuge in any of the cities or ports of the said island of Cuba, or other islands aforesaid, the President of the United States, on being informed of the fact in a manner satisfactory to him of its authenticity, shall be, and, he is hereby authorized, at his discretion to declare the said port or city to be in a state of blockade, and shall cause the same to be invested by the naval force of the United States, till the said pirates shall have been secured and punished by the authorities of the said island, or until satisfaction shall otherwise have been made; whereupon he shall deem it just and expedient to discontinue the said blockade.”

We should not take notice of this section, but as another lamentable departure from the great policy of the country. A blockade is a war measure,—a right of war, and conferred by the same principle of public law, that authorizes a nation to declare war;—an incident of that condition of things, it operates against neutrals,—perhaps your allies. If the French or English neutral refuses to take warning from our cruiser off Cuba, shall he be sunk, or if he is taken, by what courts shall he be tried? Shall his vessel be confiscated? and what language do we expect France or England to hold on the sub-

ject? or what language will Spain hold? The United States have not entered into an engagement with France or England, to hold in blockade certain parts of the coasts of Cuba, nor do we profess to make war upon Spain. A blockade has been declared by statute;—this is municipal;—it applies to our territory, or to the decks of our vessels,—not to the high seas or foreign navigation. It is not easy to understand into what tribunals such questions could be introduced, or under what plea the neutral, offending against the blockade, could be condemned.

It is however quite competent to the government to adopt a municipal regulation in regard to its own vessels, and to forbid a traffic in those seas where piracies were exercised. But the efforts of the navy in those quarters in 1823, and in succeeding years, have fully shown, that such a sacrifice of trade was not required, nor the adoption of such dangerous doctrines in regard to foreign nations. The provisions of the bill, to which we have referred, were rejected by a large majority. And those piracies, at the time subject of deep and universal complaint, have for several years been entirely suppressed.

In a decree of September 25, 1822, the principle of the laws of the Indies, in regard to a trade with the colonies, was again revived by Morales. This is one of those nice questions, that partake of all the metaphysical artificial difficulties of the whole colonial system. Admitting it was a principle of the Spanish colonial laws, and that Spain possessed the full right to regulate her colonial matters in her own way, it is nevertheless true, that a prohibition to trade, was never, in modern times, rigorously enforced, while the mother country had undisputed possession of the colonies; but at the dates of the decrees of Morillo and Morales the whole country was involved in a civil war, where both parties were entitled to equal rights;—in old Spain, itself, the Cortes were just on the eve of being expelled by French bayonets from the island of Leon, and the government was in the agony of another transition. Even after the farce of the Trocadero, where the veteran grenadiers of the old im-

perial guard of France, were made to mount to the assault in the most picturesque and theatrical manner to add a paragraph to a bulletin, Mr. Nelson had the chagrin to witness in six months four different sets of Spanish ministers in power; and as many times in that short space, he was compelled to renew, *ab urbe condita*, his whole correspondence.

Both Mr. Forsyth and Mr. Nelson were instructed to endeavour to obtain from the Spanish government a right to land on the Spanish territory in pursuit of the pirates, a proceeding very necessary to the complete annihilation of their retreats and shelters. It was, also, very desirable to make an arrangement to have consuls admitted into the Spanish colonies, especially as the commerce between the Havana and the United States exceeded in value and amount that with all the Spanish dominions in Europe. Mr. Nelson was succeeded in 1825 by Alexander H. Everett of Massachusetts, as envoy and minister with the usual full powers. Since Mr. Everett's residence in that kingdom, its political affairs have been tolerably quiet, at least, no change has taken place in the government, nor are we aware that any fresh negotiations have been entered into on the part of the United States.\*

The negotiations with Spain, considered as a whole system, exceed, in importance and magnitude, those with all other states, with the exception, perhaps, of the mother country. It is true, there is in the collection no *single treaty*, both as it regards the provisions it contains, and the circumstances, under which it was concluded, deserving of the consideration, or entitled to the interest of the treaty of alliance of 1778, with France. But with Spain have been conducted all those wearisome and protracted negotiations, respecting the navigation of the Mississippi, which, as a single topic of discussion, has not been surpassed, either in magnitude or difficulty, by any other event in our civil history;—respecting the acquisition of the Floridas, and, as connected with the Mississippi, it may be truly said, that

\* Spain is, at this time, represented in this country by the Chevalier Don Francisco Tacon, a minister resident.

from Spain was obtained the cession of Louisiana, though, for the direct transfer, we are indebted to France. Another circumstance, worthy of notice, is the fact that Spain is the only country, that has made full indemnities to our citizens for spoliations on their commerce during the war of the French Revolution. It is not important how much of this remuneration we owe to the justice or magnanimity of the Spanish government. Fortunately there was a large and rich tract of Spanish territory within the reach of our government, and as it has produced 5,000,000 of dollars for the benefit of her despoiled and aggrieved citizens, it is of slight moment, indeed, to enquire into the motives, that dictated the indemnity. A small portion of our claims on France have been paid in a similar way.

It is not probable, that much interest will, hereafter, attach itself to our diplomatic intercourse with Spain. That ancient and unhappy country, once so brilliant, so celebrated for chivalry, valour, magnanimity and all the great virtues, that adorn, enrich and strengthen a nation, seems almost thrust out of its own caste in Europe, and of its possessions in America, it now retains nothing but the islands of Porto Rico and Cuba, one alone, to be sure, that, in the hands of a thrifty Metropole, might well be termed the Sicily of modern days. A colony of the Holy Alliance with emperors for its prætors, Spain seems destined to answer little other purpose, than to be moulded by those royal and iron hands into such shapes and devices, as the fashion of legitimacy may prescribe.

## CHAPTER VI.

CONVENTION OF NAVIGATION AND COMMERCE OF  
1822 WITH FRANCE.

*American and Ottoman Legations only asylums in Paris in 1814—Restoration of Bourbons led to slight suspension in intercourse—Crawford—De Neuville—France unwilling to make a Commercial Convention—Great advantages from state of Trade—French commerce once very extensive—Gallatin—State of Trade causes great uneasiness in United States—Convention—Throws freights into American vessels—Claim under 8th article of treaty of Louisiana—Extraordinary—Account of that business—First employed by France to delay Convention, then to resist Claims—Diplomacy simplified in modern times—Executive men now more important—Argument on the claim under the Louisiana treaty—Remains without settlement—Brown, Minister—Menou, Chargé.*

WHEN the allies entered Paris in the spring of 1814, there were, in that splendid and populous capital, but two asylums into which, by the laws of war, their troops could not penetrate. One of these was the hotel, inhabited by the American minister, and the other, that of the Ottoman legation ;—the representatives of the extreme elements of free and despotic governments ;—of a warlike Tartar race, “ encamped” on the edge of civilized Europe, holding no sympathy with Christendom either in religion or letters, manners or customs ; of all the nations which (to use a term of antiquity) are denominated barbarous, the only one, that has, habitually and for centuries, exchanged, with European courts, the forms and courtesies of diplomatic intercourse ;—and of a people, planting in a savage country the best ingredients of society, there developing the principles of a government, never before either attempted or conceived, and, already, with a rapid progress, carrying back civilization to the

shores of the ocean which, in this hemisphere, separates them from its original seats. Such were the spectators of a scene, as extraordinary as any that has taken place, since Constantinople fell into the hands of Mohammed, the second of his name.

William H. Crawford, of Georgia, was, at that time, American minister in France. He arrived there in August of the preceding year, having succeeded Mr. Barlow in that mission ; he remained till April 1815.

The overthrow of Napoleon Bonaparte led to a slight suspension in the intercourse of the two countries ; but as soon as well founded assurances of the stability of the Bourbon government were received, the United States, without delay, took the necessary steps to renew their diplomatic relations. A minister plenipotentiary, M. Hyde de Neuville, was, also, received from France before October 1814.

Three subjects of negotiation, (one of them extending far back into the relations with France) have occupied the attention of this government since the restoration of the royal family, viz. the settlement of the terms of a commercial convention,—a demand on the part of France, under the 8th article of the treaty, constituting the cession of Louisiana, and a protracted discussion of claims on the part of the United States since the first and second years of the French republic. The two topics of a demand under the treaty of Louisiana, and of American claims, having been forced, in the course of negotiation, into an unnecessary and unreasonable union, we shall, for the present, omit an examination of those subjects, and proceed to an account of the convention for the regulation of commerce, concluded April 1822, at Washington.

The French Government manifested an extreme unwillingness to enter into a commercial convention, that should permit a trade on both sides on equal terms. They feared, (and time has shown, that their apprehension was not a groundless one) a competition with our ships and capital. The American ministers in Paris, Messrs. Crawford and Gallatin, successively undertook this business, but they met

either with delay and evasions, so common in diplomacy, or the French government insisted on coupling the subject with their own extraordinary demand under the treaty of Louisiana. In the mean while, the trade was fast falling into their hands. Released, as France was by the treaties of 1814 and 15, from the commercial and maritime bondage, in which she had been held for nearly twenty-five years, the first ports her vessels sought were those of this country. And, in consequence of the charges of French brokers, and an extra duty levied on cotton, brought in American ships, she was engrossing, with alarming despatch, all the trade. No one will suppose, that the traffic of a people, whose commercial skill and enterprise have received from all quarters the highest encomiums, and whose navigation is now conducted with an economy and expedition never surpassed, could have fallen a sacrifice to a fair competition. The golden day of French commerce had passed away before, even, the independence of this country; days, when the richest and most numerous merchant vessels, seen either in the West or East India seas, belonged to a people, that we have been in the habit of considering as destined to every other success, than a maritime one. Least of all did we expect, that our swift and cheap sailing vessels, that had served as the carriers of all continental Europe for those twenty-five years of war, when a French trader on the Atlantic would have been as rare a spectacle as a Chinese junk, would have been the first victims of the commercial reappearance of this people. But the returns of the custom houses, the representations of merchants, and the statements from ministers abroad left, unhappily, no doubt on this head. From 1816 to 1819, French tonnage from France, entered in ports of this country, increased from 6,506 tons to 20,428; while the American, under similar circumstances, had diminished from 44,809 to 28,501;—and the system of discriminating duties, adopted here, was so defective, it was quite evident that, in a short time, the whole American shipping would be withdrawn from that commerce.

In this discouraging state of things, a form of convention

was successively proposed by Mr. Gallatin to MM. de Richelieu and de Desselles, the French secretaries of foreign affairs, on the basis of that of 1815, with England. But those ministers were in no haste to deprive their countrymen of the profitable business, of which they had obtained such easy possession, and which was rapidly and securely augmenting in their hands. In this determination they were supported by the council of commerce of Paris, consisting of eminent merchants and, with the exception of Bordeaux, of all the chambers of commerce, as well as of the shipping interest of the kingdom. In the reports of those bodies it is fully admitted that an equality of duties, tonnage and other charges would, as it respects France, be nothing less than fatal. The United States could not regard this situation of affairs with much patience or composure ;—the trade was valuable, and (as its chief export) embraced one of the principal staples of the country. But it was not, on that account, the less annoying, that foreign vessels should enjoy such a large proportion of the benefit of it, especially as a system of entire equality would leave them but a small share. The cry, therefore, for retaliation was heard at once. As early as 1820 Mr. Gallatin wrote to the government, that negotiation had become fruitless, nor should it be matter of surprise or complaint that France expressed no desire to disturb the commercial relations existing between the two countries. To the American government belonged the obvious and necessary duty of placing its own citizens in their own ports, at least, upon as good a footing as the subjects of a foreign state. But this object was not accomplished with all the expedition, that might have been desired. It was not till May 1820, that a law was passed, fixing a new rate of tonnage, &c. on French vessels, —though it had been for some time evident that nothing could be expected from negotiation, and every month furnished fresh proof of the shameful and notorious fact that the exportation of our produce was rapidly passing out of our hands. This law deprived French vessels of all the advantages, their government had adroitly secured for them, and



laid the foundation of the convention of 1822, concluded only for two years, but which introduced an entire equality of duties, and charges of every description. The American trade to France needed but this open field, this fair competition to expand itself, at once, with the rapidity and spirit, by which all the commercial enterprises of this people have been signalized. We observe an immediate and gratifying effect upon the exports and imports, showing the perfect justness of the apprehensions of the French merchants. The year, for example, after the signing of the convention, the French tonnage had diminished from the ports of France and the East and West Indies to 4,815 tons, while the American from the same ports had been augmented to the unexpected amount of 74,558 tons. The amount of tonnage, cleared from the same ports from this country was still more favourable to American commerce. In 1826 we find, from the returns of the custom house, 98,855 tons of American shipping arriving from the same ports and of French the increased number of 12,956.—The proportion of French increase is here greater than the American, but it is to be observed, that already in 1823, the greater part of the trade had fallen into the hands of the Americans, and, if on the original amount of that year, the French had increased 8,000, the American has increased 24,000 tons.

It is to be observed that the principle of a fair competition was not recognised in this treaty\* to its full extent, but

\* "The United States of America and his Majesty the King of France and Navarre, being desirous of settling the relations of navigation and commerce between their respective nations, by a temporary convention reciprocally beneficial and satisfactory, and thereby of leading to a more permanent and comprehensive arrangement, have respectively furnished their full powers in manner following, that is to say: The President of the United States to John Quincy Adams, their Secretary of State: and his most Christian Majesty to the Baron Hyde de Neuville, knight of the royal and military order of St. Louis, commander of the Legion of Honour, Grand Cross of the royal American Order of Isabella the Catholic, his Envoy Extraordinary and Minister Plenipotentiary near the United States; who, after exchanging their full powers, have agreed on the following articles:

it was agreed, that at the expiration of two years from the 1st October 1822, when the convention went into operation,

"ART. 1. Articles of the growth, produce, or manufacture, of the United States, imported into France in vessels of the United States, shall pay an additional duty, not exceeding twenty francs per ton of merchandise, over and above the duties paid on the like articles, also of the growth, produce, or manufacture of the United States when imported in French vessels.

"ART. 2. Articles of the growth, produce, or manufacture of France, imported into the United States in French vessels, shall pay an additional duty, not exceeding three dollars and seventy-five cents per ton of merchandise over and above the duties collected upon the like articles, also of the growth, produce, or manufacture, of France, when imported in vessels of the United States.

"ART. 3. No discriminating duty shall be levied upon the productions of the soil or industry of France imported in French bottoms into the ports of the United States for transit or reexportation: nor shall any such duties be levied upon the productions of the soil or industry of the United States, imported in vessels of the United States into the ports of France for transit or reexportation.

"ART. 4. The following quantities shall be considered as forming the ton of merchandise for each of the articles hereinafter specified:

"Wines—four 61 gallon hogsheads, or 244 gallons of 231 cubic inches, American measure.

"Brandies, and all other liquids, 244 gallons.

"Silks and all other dry goods, and all other articles usually subject to measurement, forty-two cubic feet, French, in France, and fifty cubic feet American measure, in the United States.

"Cotton 804 lb. avoirdupois, or 365 kilogrammes.

"Tobacco, 1,600 lbs. avoirdupois, 725 kilogrammes.

"Ashes, pot and pearl, 2,240 lb. avoirdupois, or 1,016 kilogrammes.

"Rice, 1,600 lb. avoirdupois, or 725 kilogrammes; and for all weighable articles, not specified, 2,240 lb. avoirdupois, or 1,016 kilogrammes.

"ART. 5. The duties of tonnage, light money, pilotage, port charges, brokerage, and all other duties upon foreign shipping, over and above those paid by the national shipping in the two countries respectively, other than those specified in articles 1 and 2 of the present convention, shall not exceed in France, for vessels of the United States, five francs per ton of the vessel's American register; nor for vessels of France in the United States, ninety-four cents per ton of the vessel's French passport.

"ART.

that (unless notice was given that the convention had expired) a reduction of one fourth should take place in the duties, to be yearly continued, till all discriminating imposts had ceased. The convention not having terminated, (in consequence of the notification of either party) French and American vessels, laden with the produce of their respective countries, are now received into the ports of each other on the same and equal terms.

This arrangement was temporary, but there were some points of difference between the two nations of a trifling nature, from the settlement of which a mutual and great benefit could be derived. Being limited to two years, the convention was consented to by one of the parties in the light of an experiment. And France, never having given the notice, the convention permitted it to do, having suffered all discriminating duties to expire by the silent operation of the instrument itself, undoubtedly enjoys advantages from this trade, more than counterbalanced by a circumstance, unavoidable in the present state of French navigation, that a

**“ART. 6.** Consuls and Vice Consuls of either nation, in the other, may cause the arrest of deserters, and detain them for three months.

**“ART. 7.** The present temporary convention shall be in force for two years from the first day of October next, and even after the expiration of that term, until the conclusion of a definitive treaty, or until one of the parties shall have declared its intention to renounce it; which declaration shall be made at least six months before hand.

**“And in case the present arrangement should remain without such declaration of its discontinuance by either party, the extra duties specified in the 1st and 2d articles, shall, from the expiration of the said two years, be, on both sides, diminished by one-fourth of their whole amount, and, afterwards, by one fourth of the said amount from year to year, so long as neither party shall have declared the intention of renouncing it as above stated.**

**“ART. 8.** Ratification in one year. To take effect from October 1, 1822.

**“The extra duties levied on either side before the present day, by virtue of the act of congress of 15th May, 1820, and of the ordinance of 26th July of the same year, and others confirmative thereof, and which have not already been paid back, shall be refunded.”**

greater part of the freight falls to the share of vessels of a foreign state.

Louisiana has been a fruitful source of wearisome negotiation to this country. For a purchase, as cheap as it was valuable and indispensable, we have been visited with an uncommon portion of harassing discussion, a process certainly not costly in a government like our own, but involving a great deal of personal labour, and serving to awaken a feeling of mistrust in instruments of the plainest meaning and simplest construction. Scarcely was the government relieved of a vexatious demand on the part of Spain, when France appeared with a claim, that, in any other light than as an ordinary diplomatic stratagem, must have excited an extreme degree of astonishment ; a claim under an article in a treaty, made in 1803, by the ministers of Napoleon Bonaparte, and first presented to the notice of the American government in 1817, by the representatives of his Christian Majesty at Washington. In the outset, France undertook to connect this demand with a subject of a commercial convention, and, subsequently, has refused to hold any negotiation, concerning American claims, till the adjustment of her own, to the degree, that in 1820 it was necessary to transfer the whole discussion to this country, Mr. Gallatin not being furnished with instructions in regard to the treaty of Louisiana. This claim was presented in October 1817, by M. de Neuville in the following form :

“ The envoy extraordinary and minister plenipotentiary of his most Christian Majesty has received reiterated orders to ascertain the truth of the statement, made by several masters of merchant ships, affirming, that French vessels are not treated in the ports of Louisiana upon the footing of the most favoured nations. Upon investigation it not only appears, that such is actually the case, but the undersigned has even found, that several protests had been lodged in relation to the 8th article of the Louisiana treaty. He is well assured, that this must have been the mere consequence of error, or of incorrect interpretation given on the spot, to a clause, which is absolute and unconditional by its own terms, and which can neither be limited, nor modified, and being the essential, unlimited condi-

tion of a contract of cession, can neither be subject to limitation, nor to any modification whatever. The minister of his most Christian Majesty persuades himself, that it will suffice thus to call the attention of the federal government to this affair, in order to obtain from its justice the reparation of an injury so very prejudicial to French commerce. He, therefore, requests of the Secretary of State, that this his representation, made by order of his court, be submitted, as soon as possible, to the President, in order that his Excellency may be pleased to issue orders to such effect, that in future the 8th article of the treaty of 1803, between France and the United States, receive its entire execution, and that the advantages, granted to Great Britain in all the ports of the United States, be secured to France in those of Louisiana."

The French minister cannot be charged with appearing to feel, himself, the slightest distrust of the entire justice of a demand, neglected by the government, that made the treaty, on which it is founded, eleven years, and, then again three years by the present government, not much disposed to examine with an indulgent or careless eye the acts of its predecessor.

The article (8) occurs in what is called the treaty of cession of Louisiana, (being the first of the three conventions embraced by that transaction) concluded at Paris April 30, 1803, and is in the following words: "In future and forever after the expiration of the twelve years, the ships of France shall be treated on the footing of the most favoured nation in the ports above mentioned." This phrase, (favoured nation) from the frequency of its use in diplomatic language, has acquired a technical meaning. But we cannot well arrive either at its just signification in this particular instance, or the fair construction of the sentence, in which it is embodied, without quoting the article immediately preceding.

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country, ceded by the present treaty, until general arrangements, relative to the commerce of both nations, may be agreed on, it has been agreed between the

contracting parties, that French ships, coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France, or her said colonies, and the ships of Spain, coming directly from Spain or any of her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans and in all other legal ports of entry within the ceded territory in the same manner, as the ships of the United States, coming directly from France or Spain, or any of their colonies, without being subject to any other, or greater duty on merchandise, or other or greater tonnage, than those, paid by the citizens of the United States.

“ During the space of time, above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States. It is, however, well understood, that the object of the above article is to favour the manufactures, commerce, freight and navigation of France and of Spain, so far as relates to the importations, that the French and Spanish shall make into the said ports of the United States, without in any sort, affecting the regulations, that the United States may make, concerning the exportation of the produce and merchandise of the United States, or any right, they may have to make such regulations.”

The United States have seldom been able to shake off at once a demand of this kind. We are not in a situation, nor is it considered to be the policy of the republic, after having complied with those decent formalities and courtesies, the necessary and refined intercourse of nations has now established, to resort to the direct remedies, we have seen, at least, one power in Europe apply, often, in so abrupt and, generally, in a manner, so effectual. But these claims may be observed, creeping through a tedious and protracted correspondence,—a discussion, at one time, shunned for want of instructions,—transferred, year after year, from one side of the Atlantic to the other, then thrown, like a drag chain, upon some other topic of negotiation, and, at last, when

ministers and Secretaries of State are all wearied and exhausted, the whole difficulty, in consequence of a pressure from some other quarter, or the prospect of an equivalent advantage, vanishing in a silent convention.

Like almost every other great concern of life, diplomacy has, of late, assumed a simple, practical form. Not only during the present, but, even, the last century, the most useful as well as, in reality, able statesmen have been principally celebrated for talent at business, for a mere faculty of managing and conducting affairs with a just discretion and energy. To this quality Sir Robert Walpole, whose reputation is by no means equal to the station, he held in England,—to the influence, he possessed in Europe, (because his parts were solid and not brilliant) probably owed his power and success. Men have now not more capacity than formerly, but it has ceased to be the fashion to deliver learned, laborious disputations in Congresses of negotiation, on topics, neither requiring defence nor illustration. The Congresses of Utrecht, Aix la Chapelle, or Gertruydenberg may have founded the reputation of various scholars. Even Lord Chesterfield, so deeply imbued, as he was, with the notions of a man of the world, anxiously recommended to his son a careful study of the writers on civil law, as a necessary accomplishment to a statesman. And, perhaps, there is some speciousness in the remark, that the labour and learning, bestowed on the first diplomatic assemblies, have rendered those, of a more recent date, of a simple and practical description. Still, it, probably, will be found, that men, merely professional, have overrated the value of learning, as applied to the concerns of life ; or have not been fully aware of the fact, that the judicious management of public affairs required only a greater developement of the same faculties, that appeared to most advantage in the conduct of private ones.

We do not, of course, mean to intimate the least doubt of the worth of learning or of its general admirable effects on society, or to deny that parts, shining and ornamental, are best adapted to attract the notice of the world. The

accomplished orator will live longer with posterity than the solid, practical statesman. Cicero and Burke have pronounced, each in their time, the most beautiful discourses, that the senates of Rome or England can boast. But corrupt and debauched as was the period, in which the first flourished, and dangerous and difficult the æra of the second, it seems most likely, that the extraordinary gifts, with which these wonderful men were endowed, could not have been exerted in any other way with equal effect, either for the public welfare or their own fame. Still, it is well to bear in mind, that several of the orations of the first were never spoken, and, how others were received in the Roman senate, we have now no means of forming a judgment, but it is known, that many of the discourses of Mr. Burke, which we read with emotions of unmingled delight, were delivered to empty benches. The United States and Great Britain have both possessed orators (in the modern sense) that were, also, excellent statesmen, but the beauty of their oratory consisted in its being adapted to the taste of the times, to the manner of doing public business, and though extremely efficient in debate, not, at all, suited for rhetorical purposes, or imbued with attributes, that will impart interest to it in the eyes of posterity. The greatest orators are now the best "debaters," and though education is indispensable as a foundation, yet the talent, required for success, is probably of the rarest as well as most exalted description. Still, the applause, acquired in that line, if immediate, and, on that account, sometimes the most desirable, is comparatively of a perishable and evanescent order. These remarks are general and disconnected; but there is certainly a wide difference between men of genius, calculated to make a figure in the poetical and more engaging part of politics, and those, to whom is assigned by nature the less conspicuous task of conducting with spirit, efficiency and success the great practical affairs of life.

The taste, or emergencies of the present times have prescribed a mode of doing business different from that, which, with some signal exceptions, prevailed the begin-



ning of the last century,—a system, perfectly akin to the parade and pageantry, the universal influence of the theatrical court of Louis the 14th, introduced into all the concerns, habits and fashions of life. The necessity of rapid decision and immediate action the last thirty years, has been so great, that generals have neither been able to indulge themselves with a whole campaign in crossing a river, nor ministers with a winter's residence in an agreeable city in arranging the positions of one or two small states in Germany. The way, in which the most momentous matters were disposed of at the Congress of Vienna, shows, that the parties were not only aware of their own strength, and of the strength of each other respectively, but, having ascertained the exact measure of these two circumstances, they proceeded, at once, to settle, like men of business, every point in discussion, without wasting their time in long disquisitions upon topics of national law, which could be any thing but novel or entertaining to a well drilled diplomatist of twenty years standing.

The usual courtesies of intercourse have thus far compelled the United States to enter into a discussion of this French claim, though the object of presenting it, could easily be guessed, and the facts and arguments, by which it has been supported, admit of an immediate and conclusive answer. We shall spare the reader the fatigue of following, step by step, the whole series of correspondence, that has taken place on this subject since 1817, either in this country or in France. But before offering a brief account of this singular and unlooked for transaction, we take the opportunity to remark, that France has not manifested the slightest disposition to withdraw the demand, and, having made use of it for some time as a ground for declining to negotiate on the subject of discriminating duties, it now serves the convenient purpose of arresting the whole progress of the discussion, in regard to the just claims of American citizens on that government.

France has never said, she was placed in Louisiana on the footing of the most favoured nation, gratuitously on the

part of America. That would be a precarious and feeble mode, indeed, either of asserting or supporting a claim. But she enjoyed the privilege conditionally ;—by purchase. The cession of the province was a generous and abundant equivalent for it. M. Pasquier informed Mr. Gallatin in 1819, that the stipulation of the eighth article was the solid, real compensation, made to France, for the transfer of this vast property ;—the purchase money, the 80,000,000 of livres, could be viewed in no other light than, as an incidental, or accessary portion of the just value. And this consideration, as far as regards the ports of Louisiana, is as much an equivalent for a privilege, as those equivalents, that other nations offer to America, to be received in all the ports of that extensive country, without suffering the penalty of a discriminating duty. The United States and England have made a bargain, by the terms of which the vessels of the two nations, laden with certain descriptions of produce, enjoy, in the ports of each other, the same and mutual exemptions. This is a bargain of a general nature, applying to all the ports of a country. The United States have offered substantially the same commercial compact to France. In 1803, the First Consul entered into a contract with America of a specific, or local description. An extensive and valuable province was transferred for various considerations or reservations, viz., that the inhabitants of the ceded territory should be incorporated into the union, &c.—that the United States should execute the treaties, made by Spain with the Indians,—that for twelve years the ships of France and Spain should enjoy special privileges in the ports of Louisiana.—These, for example, may be considered reservations ;—we need not say, all equally binding. Then, in another convention we find the United States agreeing to pay France a specified sum of money, and to pay debts, due by France to the citizens of the United States. Whether we apply to these different conditions the same reservation or consideration, it is quite clear and undeniable, that they all form a part of the price, paid for Louisiana. By this arrangement France abandoned the sovereignty of Louisiana, but by no

means the exclusive use of the property. The distinction between these two positions is not a difficult one to understand. Even if the eighth article of the first convention was stricken out, an illustration of the principle still exists in that instrument, for it was quite as competent to the United States to reserve to France a perpetual use of the ports of Louisiana as a use for twelve years. It was not the business of France to enquire into the reasons, that induced the United States to prefer this mode of compensation, and that government would, probably, not be much gratified by the supposition, that the reasons were not good ones. Indeed, a very short experience has convinced Europe, that the very last reproach, we can offer the American government, is an indifference, or a want of attention and vigilance to the interests of its citizens. The United States, holding the sovereignty, could enforce within the territory of Louisiana, the observance of all its municipal laws, and the exact execution of treaties with foreign powers. This species of authority is, by no means, incompatible with perpetual commercial privileges, granted to foreign nations. They confer no right in executing laws. This right, which literally constitutes sovereignty, belongs to the nation in this particular instance, possessing the territory. The parties to this contract knew, that the federal constitution allowed no preference among the states,—by the compact of union they are subject to the same charges and enjoy the same privileges. Louisiana, acquired as a territory, was entitled, under the provisions of the third article, to be incorporated into the union with the least possible delay. “No preference in the words of the ninth section (first article of the constitution) shall be given by any regulation of commerce or revenue to the ports of one state over those of another.” “But this peculiar condition of the ports of Louisiana arose from a state of things, preexistent to her admission as a state, or acquisition, even as a territory. In the opinion of Congress, the instrument of cession of Louisiana comprised no resemblance to statutes, containing commercial regulations, or prescribing the modes of ascertaining and collecting revenue. It is well

here to mark the obvious difference of the two principles,—the one forbids Congress to encumber with restrictions, or foster with advantages, not common to all, a territory, created a state,—the other principle requires Congress carefully to fulfil terms or provisions, exacted or consented to as the condition of its admission. The parties, having, therefore, agreed to admit Louisiana as soon as possible, it only remains to enquire upon what terms this act should take place. There was but one mode, and that in conformity with the conditions of the treaty. Two years after the admission of Louisiana (which took place in 1812) France and Spain enjoyed in her ports all the benefits, secured by the seventh article, and which could never be granted to any other nation.—Congress, therefore, determined that the conditions of the seventh article, were not at variance with the provisions of the constitution in regard to the regulations of commerce or revenue in the different ports of the United States, though it never could be said, that a preference was not shown to the ports of Louisiana in the French and Spanish trade. It is true this inequality lasted only two years, but it is unnecessary to observe, that that circumstance affects only the duration of the privilege, not the value or soundness of the principle. If, therefore, there was at this day any contradiction between the third and eighth article, how could Congress, in 1812, surmount the objection from the much stronger inconsistency, which, on this supposition, must have existed between the third and seventh article.\*

This is simply a legal construction of the 8th article, wholly extracted from the instruments themselves. But we shall find that very considerable force may be given to it by circumstances, arising from the nature of the trade, and the situation of the province. We cannot be long in discovering

\* The third article is in these words. "The inhabitants of the ceded territory shall be incorporated into the union of the United States, and admitted as soon as possible, according to the principle of the federal constitution, to the enjoyment of all the rights, immunities and advantages of citizens of the United States."

the reasons, that should make it extremely important to France to obtain the perpetual possession of this trade. The literal, scholastic view of the subject is much indebted to considerations of policy, thus obvious and impressive. We observe, therefore, that great emphasis is laid on the fact, that Louisiana was a French colony, entirely imbued with French habits; and having always been accustomed to the products and manufactures of that country, it would have been regarded as an act of injustice and infidelity in the Metropole to abandon them to the uncertain mercy of a government, that, to say the least, could not feel the least sympathy with them. France sought to secure to this colony a perpetual enjoyment of the luxuries and necessities of her fertile soil,—of her rich and ingenious manufactures,—to herself the benefit of the great trade, this consumption, daily and rapidly augmenting, would create and maintain.

The value of this cession has been estimated at 600,000,000 dollars,—it was stated by a member on the floor of Congress to exceed the sum of 50,000,000 dollars, and, yet, the First Consul parted with it for a sum not exceeding 17,000,000 dollars. There is no other way to reconcile these different statements than by supposing, that the 8th article constituted a portion of the compensation.

This is a view of the manner, in which the French claim, under the 8th article of the treaty of Louisiana, has been presented to the consideration of the United States. The reader, we believe, will not be much struck by the ingenuity, certainly not by the force of the argument. It will, immediately, occur to every one, that the 7th and 8th articles, themselves, already quoted on the preceding page, are the best answer possible to the demand. The 7th article gives all possible encouragement for a "limited time" to the commerce of France and the United States, "as it is reciprocally advantageous." But that limited time, having expired by the terms of the article, and for the reason given in the article, it is declared in the next stipulation, that the ships of France shall, thereafter, be treated on the footing of the most favoured nation. It will, also, not escape notice that

the stipulation, upon which the claim is founded, applied only to the ports of Louisiana, but the concessions to other nations, from which the claim originated, extended to all the ports of the Union. The demand is, therefore, broader than the stipulation upon which it rests. At any rate, taking the 8th article in its most literal and rigid sense, it is sufficient to say, that France is now on the footing of the most favoured nation in the ports of Louisiana. In other words, France possesses all the advantages and privileges, enjoys all the favours granted to any nation. If the vessels of England, the Netherlands, of Sweden and several of the Hans Towns are admitted on the same terms as American, shall it be said, the United States have granted favours to those vessels,—by no means ;—those vessels enjoy no favours,—they exercise a right perfectly earned by conceding to American vessels similar privileges in their own ports. Reciprocity of duties is a bargain of which all nations can avail themselves. But the 8th article neither declares, nor can it be made to intimate, that France shall enjoy, as a free gift, that, which is granted to other nations for a full equivalent. The amount of the demand is, therefore, in strict language, not to be treated as favourably, but more favourably than the nations France calls most favoured. To have ceded to France a perpetual privilege in the ports of Louisiana would have despoiled the United States, at least, of one portion of sovereignty,—the impossibility, hereafter, of making a commercial treaty with mutual advantages. The inalienable immunities of a foreign nation in our ports would, forever, have disabled the government from meeting all others on an equal footing ; it is very little short, indeed, of a stipulation never to conclude a commercial convention with any other nation than France. Thus encumbered, the sovereignty is not full and perfect. And yet France professes in one article of the treaty to cede the territory in full sovereignty, and in another to require that Louisiana shall be admitted as soon as possible into the family union ;—two arrangements entirely incompatible with the French construction of the 8th article. We have already shown that the sovereignty

is not full, and we need only refer again to the provision of the federal constitution, before quoted, to point out the impossibility of admitting Louisiana in the manner, either prescribed in that instrument or in the treaty of cession.

“ That the Senate in 1803 did not formally object to the stipulations of these 7th and 8th articles must be ascribed to its never having entered into the imagination or conception of that body, that such a claim, as that now attempted to be raised from it by France, was either expressed in, or to be implied from them. Whether the special privileges, granted for twelve years to the ships of France and Spain in those ports, were compatible with the constitution of the United States, or with the other article of the treaty by which the inhabitants of the ceded territory were to be incorporated into the Union, and admitted, according to the principles of that constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States, might be and was a question to the Senate in deliberating upon the treaty. It was a question of construction upon a clause of the constitution, and that construction prevailed, with which the terms of the treaty were reconcilable to it, and to themselves. But whether the claim, now advanced by France, is reconcilable with the constitution of the United States is no question of construction or of implication. It is directly repugnant to the express provision that the regulations of commerce and revenue in the ports of all the States of the Union shall be the same.

“ The admission of the State of Louisiana, in the year 1812 on an equal footing with the original States in all respects whatsoever, does not impair the force of this reasoning. Although the admission of French and Spanish vessels into their ports for a short remnant of time upon different regulations of commerce and revenue, from those prescribed in the ports of all the other States in the Union, gave them a preference, not sanctioned by the constitution, and upon which the other States might, had they thought fit, delayed the act of admission, until the expiration of the twelve years, yet, as this was a condition, of which the other States might waive the benefit, for the sake of admitting Louisiana, sooner, even, than rigorous obligation would have required, to the full enjoyment of all the rights of American citizens, this consent of the only interested party, to anticipate the maturity of the adopted

child of the Union, can be considered in no other light, than a friendly grant in advance of that, which, in the lapse of three short years, might have been claimed as of undeniable right"———"if the admission of a part of those inhabitants did, in fact, by a short time precede the termination of the period, subject to the exclusive privileges of French and Spanish vessels in their ports, although the sentiment, cited by the Baron de Neuville be perfectly correct, that the constitution ought not to be violated for a single day, as no question appears to have arisen at the time of the admission of the State upon the application of this article, and as a privilege of French and Spanish vessels was never, in fact, denied them, during the term for which, they were entitled, by the article, to claim it, whatever transient and inadvertent departure, in favour of the inhabitants of Louisiana from the principle of the constitution, may have occurred, is, as the Baron de Neuville observes, a question of internal administration in this government, from which France has received no wrong, and of which, therefore, she can have no motive to complain.

"For the term of twelve years, therefore, from the time specified in the treaty, France and Spain enjoyed, by virtue of the seventh article, special favours and privileges in the ports of Louisiana. But it was not certain at the time, when the treaty was concluded, that the inhabitants could, within twelve, or twenty, or even fifty years, according to the principles of the federal constitution, be entitled to claim admission into the Union as a State. After the expiration of the twelve years there might be an indefinite interval of time, during which, the special favours, conceded to France and Spain in the seventh article, might be transferred to other nations, and the eighth article was obviously intended to avert that contingency, by stipulating that, after the twelve years of special favour in the ports of Louisiana, the vessels of France should be on the footing of the most favoured nations in the ports aforementioned,—importing, by the proper meaning of the terms and without any ambiguous inferences of specialties from generalities"———"that no special favour in the ports of Louisiana should, after the twelve years, ever be conceded to any other nation to the exclusion of France. This is the plain and obvious meaning of the article;—the only meaning, deducible from its letter,—the only meaning, traceable to the intention of the par-



ties, by its immediate connexion with the special and exclusive privilege of the article immediately preceding it, and of which it is the natural complement."

The last correspondence in regard to the 8th article took place in 1824,—our government had declined the preceding year to couple this discussion with the claims of American citizens, being elements, that could, by no means, enter into the same negotiation, but had expressed an entire willingness to proceed on a separate examination of the subject. This was declined by France. Having now completed an account of the negotiations with that country, with the exception of the subject of the claims, which we have reserved for a separate chapter, we have, in this place, only to remark, that, in February 1815, Albert Gallatin of Pennsylvania succeeded Mr. Crawford at that court, and the Baron de Mareuil, M. de Neuville in this country, both envoys extraordinary and ministers plenipotentiary. At present, France has only a chargé in the U. States, the Count de Menou, but our own government is represented there by a minister with full powers, James Brown of Louisiana, appointed in 1824.

## CHAPTER VII.

## ACCOUNT OF THE CLAIMS ON FRANCE AND NAPLES.

*Very perplexing though important subject—Difficulty began in 1778—French in 1793 captured American vessels—First class of claims—Embargo at Bordeaux—Convention of 1800—Claims of two governments respectively renounced—United States responsible to their own citizens—Convention of 1803—Second class of claims—French credit very bad—Convention of 1803 defective on subject of claims—Livingston instructed to negotiate an additional one—France declines—Claims amount to from 8 to 11,000,000 dollars—Continental system—Third class—History of those claims—French government have never answered statement of American government—Paid every body in Europe—Refuse even to liquidate—Seek to couple them with business of Louisiana—Nothing in fact done since 1816—Naples—Pinkney sent to that court in 1816—Discusses the claim with the Marquess di Circello—Long letter—Vindicating the principle of the demand—Circello refuses the application—Denies that Naples is responsible—No other European government gone so far—Nothing more done.*

THIS topic is exceedingly complicated and perplexing;—for its origin we must look back to the first treaty of 1778 with France;—the two succeeding conventions, containing express and, apparently, precise stipulations on the subject, have only added to the confusion and difficulty. And as the government (for reasons, which do not appear) has but lately disclosed the correspondence in relation to the claims, their history has for a long time remained unknown; nor is their amount even now ascertained. Still, a careful examination of this business is important and necessary, not only on account of the property, unjustly and for so long a time withheld, but it is the best illustration, we have, how little the condition of the world and the progress of this country were anticipated by the authors of the first European treaty;—

how great, on the one hand, is the difficulty of providing in a simple way for claims, not disputed, by either party ;— and, on the other, how easy it has been by the use of ordinary diplomatic subtleties and fallacies to postpone, year after year, demands, the justice of which no one undertakes to deny.

Twelve years after the treaty of '78 was concluded, America was formally invoked to guaranty, under the stipulation of the 11th article, the French islands in the West India seas, at that time surpassing all others in their richness and flourishing state of cultivation. This demand, though just and well founded, was not complied with, for reasons, we have endeavoured to explain in the second chapter on France. In 1793, the French began to capture our vessels, irritated at the course, pursued by this government. And as early as September of the next year, we find the claims arranged under separate heads, though there are no means within reach of ascertaining the precise amount of each class.

1. Injuries by the embargo at Bordeaux July 1793 ;—  
the number of vessels detained under this act was said to be 103.\*

\* "The object of this embargo was declared to be (though most probably not the true one) to detect some English vessels, known to be trading between Bordeaux and England under the American and other flags, and with forged, or '*assimilated*,' papers. On this subject Mr. Fauchet writes to Mr. Randolph, 'As to the embargo on American vessels, imperious circumstances, the salvation of the country, have imposed that measure ; but the interests of none will be injured, and to convince you of this, I recite an extract of a letter which I have just received from citizen Tallien, representative of the people at Bordeaux.—'It is possible,' he writes to me, 'that some malevolent persons may make use of this pretext (the embargo) to disturb the harmony, existing between the Americans and us, or may represent this measure as a violation of treaties between the two nations ; the interest of individuals may, for a moment, cause the general interest to disappear. It is then to you, brave republican, and the true friend of your country, that we consign the care of defending it to Congress ; (should the measure happen to be there calumniated) say to our brethren, that it is the intention of the committee of public safety, the ac-

2. For supplies furnished St. Domingo.
3. Cargoes of provisions, &c. detained for delay of payment.
4. Vessels detained by cruisers of the French republic in violation of the treaty of '78.
5. Vessels taken at sea as above.

The demands on France kept continually increasing to the close of the century, principally, however, for depredations in the West Indies. In another place, we have given a list of the decrees under the protection of which assaults were committed on our commerce and property. These claims, as created to the close of the century, were finally renounced on the part of the United States by the 2d article of the convention of 1800, provided France abandoned all her pretensions on the score of a guaranty. By this act the American government virtually assumed the demands of its own citizens. Not only the constitution forbids the government from taking "private property" for public use "without just compensation," but, in this case, a full equivalent, the surrender of the guaranty, was made by France for the adoption of the claims by the United States. But hardly was the instrument signed, when fresh claims arose on the construction of the provision, intended to constitute a final settlement. No one would have supposed that an article, inserted in a convention for the purpose of bringing this troublesome business to a close, would have made it necessary for our own government to enter into immediate explanations in behalf of its own citi-

tual centre of the French government, to indemnify all the owners or captains, who, by operation of the embargo, have been obliged to remain a length of time in France, and that the proposition, which will soon be made to them, in the name of the committee, will be advantageous to both nations.'

"On the 18 November '94, a decree was passed, making provision to indemnify for the detention by the Bordeaux embargo, and for supplies (by contract and by force) furnished to the administration of St. Domingo; but the provision was not carried into effect, owing to the deranged state of the French finances. The decree itself, however, was a standing and conclusive proof of the obligation, the acknowledgment and the promise of the French government, to indemnify these claims."

zens, or that 20,000,000 of livres would have remained more than twenty years in the coffers of our treasury, expressly reserved, by a subsequent convention, for the payment of a portion of these claims. The restitutions, demanded by the United States, under the 4th article of the convention of 1800, comprised three descriptions of cases.

1. Cases of capture, where no judicial proceedings were held.
2. Cases, not definitively decided on in French tribunals the 30 September 1800.
3. Captures made, subsequent to that date.

Under the 3d and 4th articles these claims were just, and to withhold the property was, on the part of France, an act of complete injustice. It has been said, that by the 2d article of the convention of 1800, the United States adopted all the claims of its citizens, subject to the three reservations above written. This constitutes the first period in the history of these claims.

Then, as the next period, we have the third convention of 1803, by which this government agreed to assume claims on France, prior to the 30th Sept. 1800, for 20,000,000 livres, no settlement having been made of the disputed points under the convention of 1800. Hardly was this convention ratified, when a variety of difficulties again arose. Shall we call this a fatal influence these claims have not been able to shake off to this day, or were the instruments framed with haste, or, in the desire to be relieved, in the one case, of the guaranty of '78, and, in the other, to secure the acquisition of Louisiana, were objects of less weight and moment treated with precipitation? At any rate, in less than a year after the convention of 1803, instructions were sent to the minister in France to desire the French government to suspend all draughts\* in favour of persons, whose claims might have been liquidated, till all the claims were ascertained, and to

\* A commission, appointed under this convention, for the adjustment of these claims, reported the sums allowed to the French minister of the treasury, who had an authority to draw on the American government.

propose a convention for the purpose of including, within that of 1803, the unsettled matters of 1800, or to distribute the 20,000,000 livres, provided by the convention of 1803, and make France debtor for such balance, as might exceed that sum;—an arrangement we could not suppose France would be much disposed to accept. After the proofs we possessed of the extreme unwillingness of that government to satisfy the undeniable claims of our citizens,—to execute the 3d and 4th articles of the convention of 1800, it was a degree of generous confidence, by no means desirable or necessary among nations, to leave any point, whatever, for future discussion, particularly as the mode, in which American creditors were likely to be treated, was well known to Mr. Livingston in March 1802. We find him in that month writing to this effect to the government :

“ As to the contract demands, the Minister of Marine told me, I might as well ask him to cut off his father’s head, as to ask payment. However, on this subject I shall be better informed, when they reply to my note. I believe that they may possibly put the debt upon their 5 per cent. loan, which is now at 57, but will, in that case, fall considerably, so that, at most, the creditor, after waiting many years, will sink half his debt, but, as they hint, necessity has no law.”

And, in the following May, to the Minister of Exterior Relations, to this effect :

“ I find every possible obstruction thrown in their way, first in the liquidation of their debts, and next in affording a fund for their payment, when, after a tedious and expensive process, the debt is liquidated, I see the Board of Compatibility extending to part of them a law, which, at the present price of stock, would rob them of five-sixths of their capital; a law, which repeated declarations of past legislatures have shown not to have been intended to comprise foreigners, and in which they could not have been comprised without the most flagrant violation of public faith, but which, in every event, is superseded by the fifth article of the treaty, which expressly stipulates for the discharge of their debt.

“ I see the commercial capital of my fellow citizens, the only means of their subsistence, withheld from them till the interest is

equal to the principal sum, and yet no allowance made for that interest in the liquidation of the account. I see others of them, after sustaining heavy losses by the destruction, committed at St. Domingo, compelled to become creditors of France by an act of power. And while the agent of France, in America, is declaring to the government of the United States, that every measure of justice is offered by the prize courts to the claimants here, I see those very claimants reduced to beggary by their decisions.

"While I am unable to obtain satisfaction for creditors here, and find my breast wrung by the distresses of men, who have wasted their substance and time in prosecuting their claims through a series of tribunals, I am in hourly expectation of seeing another set of creditors arrive with fresh demands for property, wrested from them by violence, or voluntarily given from too fond a reliance on the assurances of agents, who seek new credits by circulating in America reports of satisfaction, given for the old. If those demands, grounded in the strictest justice, and confirmed by a solemn convention, have hitherto been treated with neglect, on what foundation can I place the new ones, that will entitle them to equal attention? Can it be possible, sir, that France, great, rich and powerful as she is, should not have the means of satisfying the comparatively insignificant demands of the American creditors, while she is placing the debt, due to her own citizens, upon the most stable foundation, and astonishing the world with the magnitude of her undertakings? Can armies and fleets, sir, be sent to a distant quarter of the globe, so totally unprovided, as to make it necessary to violate the rights of a friendly nation, to seize upon her commercial capital, and enrol an additional number of her citizens in the list of hopeless creditors? You will admit, sir, that the attempt to include the American creditor in the list of those, who have had two-thirds of their debt struck off, and the total silence of the Boards, with respect to the interest, are not calculated to inspire confidence or to revive credit.

"You are already apprised, sir, that in restoring the French national ship, the *Berceau*, the government of the United States did not content themselves with restoring her *in the state she was*, but expended a very considerable sum of money in giving her a complete repair."

It never could have been said, that the convention of

1803 was an instrument to carry into execution the provisions of the one of 1800. It should, rather, be called a convention of exceptions to that, for no claim could be allowed under it, unless falling within some one of the following conditions :

1. Whether the debt was due in its origin to an American citizen.
2. Whether it existed before the 30th September 1800.
3. Has such an American citizen established a house of commerce in foreign countries, in partnership with foreigners.
4. Can he, by the nature of his commerce, be considered as domiciliated abroad.
5. Has he, under the circumstances of his case, a right to the protection of the United States.
6. Was the merchandise, or other property, American, when it passed into the hands of the French government.
7. Does the claim arise from supplies, embargoes and captures made at sea, excluding from the word supplies freight, indemnity and demurrage, except where they are claimed, as incidental to embargoes.

In 1804 Mr. Livingston was instructed to negotiate a convention, additional to that of 1803, for the purpose of removing doubts on the subjects of freights and indemnities. 2. To provide compensation for the separate property of American citizens, connected with foreign partners ; 3. and also for those vessels, that were taken after the convention of 1800, and before its ratification. To this proposition the following answer was made by the Minister of Exterior Relations :

“ You will not have forgotten, that it was then agreed upon, between the two governments, to place, under the charge of the United States, all the claims of Americans upon France, and to make an approximate valuation of them. The respective plenipotentiaries agreed to take, as a basis, the sum of all the claims, as well liquidated as unliquidated, which have been presented to the French government by the Americans ;—this sum amounted to



twenty millions, and as there was room to expect, that the unliquidated portion would undergo some reduction, the American plenipotentiaries were persuaded, that even by admitting afterwards some claims, which might not have been comprehended in the list, this addition of claims, compensated by the reduction that others would undergo at the time of the liquidation, could never exceed 20,000,000, the whole amount.

"It was in consequence of these dispositions, that some months ago you demanded the admission of different claims, which had not been inscribed upon the list of liquidation: the French government has shown itself disposed to consent thereto to the amount of twenty millions, so that they do not at any time hereafter exceed this sum, and that no part of the American claims be placed to the account of France.

"In adhering to these dispositions, conformable to the treaty of 10th Floreal, (1 May) and from which his Imperial Majesty will not deviate, any explanatory convention would be superfluous, and the intention of his Imperial Majesty is to keep from all future question an affair, completely terminated. The convention of the year 11 (1803) foresaw the whole case; the whole of the American claims are to be placed to the account of the federal government; a list of them has been made. The liquidation of the articles, of which it is composed, shall be decided before the rest, if it does not reach the sum of twenty millions; other claims will be comprehended therein, but none shall be, which exceed this sum, because it is at this point that the two governments are agreed to stop."

Mr. Livingston supposed that 20,000,000 of livres would cover all the claims, for which provision was made by the convention of 1800, and it was even believed, that when the list was thoroughly purified, the amount would not exceed 12,000,000. It is important to observe, that the convention of 1803 did not debar any citizen from pursuing such claim, as he might have posterior to September 30, 1800;—the exercise of this right was secured by a special stipulation. During the nominal war, that existed with France towards the close of the last century, we captured from that power 83 vessels;—11 were acquitted not being

found armed, and 68 condemned, half to the captors and half to the United States ;—all national vessels were either paid for, or restored. A memorial was, however, transmitted to the government, requesting that these vessels might be withheld, till it was ascertained whether France would make proper provision for the claims of their citizens.

The year 1806, the commencement of the continental system, is the next and third period of the history of the claims, but a class of an entirely different description was created under those various and hostile acts of the French government, of which the Berlin decree was the first. It has been stated in debate in Congress, that the claims, prior to 1806, exceeded in amount 200,000,000 of dollars, a hasty and rhetorical expression ;—they do not probably exceed 12 or 14,000,000. They were estimated by the envoys in France in 1803, at 20,000,000, but various deductions must be made from that sum, such as claims discharged by the council of prizes or commissioners,—previous payments,—payments from the Louisiana purchase money,—claims without proofs, &c. Against these pecuniary claims the French government set off various demands of a pecuniary, political and mixt description,—such as injuries, resulting from refusal to execute the guaranty of '78,—from the President's proclamation of neutrality of '93,—denying asylum to privateers and their prizes, and numerous indulgences, granted to British ships of war, contrary to the treaty of alliance. Still, it is evident that if the United States accept these demands as an equivalent, the creditors have at once a claim on their own government. The claims exist, and ought in justice to be paid by France or by America, if the former government has discharged herself from that obligation or liability by services rendered this country, or by suffering violations of treaties without exacting immunities. From this statement the reader will at once perceive the difficulties, and most perplexing circumstances and considerations, by which these claims are environed ;—we are almost tempted to say, overwhelmed. Under this part of the subject two questions arise, one of fact as to the

amount and validity of the respective claims, and the other of the principle involved in the intricate question, relating to the liability of the government. The first does not, of course, admit of a discussion in this place, and, as to the last, it can only be determined by an examination of the measures of this country at the period, when these claims were created ;—a subject we have treated at large in the preceding chapters. We shall only remark, that all that portion of counter claim on the part of France, created by the provision of the guaranty, was renounced by that government in the first convention with Napoleon Bonaparte.

We shall now give some account of the claims, arising under the Berlin, Milan, Rambouillet, and other decrees of the imperial government of France from 1806 to 1810.

“ The right to an indemnity, being founded on the law of nations, extends to all cases, where there has been an evident infraction of that law, such as is recognised by civilized nations.

“ Of the acts of the former French government, openly violating that law ; those issued on the 21st November 1806, at Berlin, and on the 17th December 1807, at Milan, were promulgated in the shape of public decrees, applicable, at least, nominally, to other nations, as well as the United States. Other acts were, exclusively, directed against America ; appearing, also, sometimes under the form of decrees, as that of Bayonne, of the 17th April 1808, and that of Rambouillet, of the 23d March 1810 ; and, at times, being only special orders for seizing or selling certain American vessels and cargoes. To these various acts, must be added the wanton destruction, at different times, of American vessels on the high seas.

“ That the Berlin and Milan decrees, so far as they declared liable to capture and condemnation neutral vessels, pursuing an innocent commerce, and contravening no municipal laws, were an evident violation of the law of nations, has not been, and cannot be, denied. The plea of retaliation, grounded on a supposed acquiescence of neutral powers in certain acts of Great Britain, and urged in justification of those decrees, was unjust in its principle, and altogether inadmissible, when affecting a neutral instead of an enemy. And, even that pretence for plundering a friendly power was

abandoned, when the two belligerent governments, whilst continuing to capture the vessels of the neutral trading with their respective enemy, permitted a direct commerce, by means of licenses. But that plea was, in point of fact, destitute of foundation with respect to the United States. That they had uniformly opposed the aggressions of Great Britain, on their neutral rights, is notorious. It is not less true, and appears from all their public acts and from the tenor of their negotiations with both belligerents, that it was solely owing to the acts of France, to the Berlin and Milan decrees, that still more decisive measures of resistance were not early adopted against Great Britain. So long as France and England equally continued to violate the neutral rights of America, she could not have selected either of those nations for an enemy, without tamely submitting to the aggressions of the other, and without deviating from that impartial course, which it was her constant endeavour to pursue. And when, at last, the French decrees had been revoked, so far as America was concerned, the perseverance of England in continuing her unlawful orders, and in violating the rights of the United States, produced a declaration of war on their part, against that country.

"Notwithstanding the intrinsic justice of the claim of the United States for losses sustained by their citizens, under the Berlin and Milan decrees, it was intimated by your excellency that those decrees having been of a general nature, other nations that had also experienced losses by their operation, would have had an equal right to an indemnity, and that those acts not having been enumerated in the last treaties and conventions between France and the other European powers, amongst those for which a compensation should be made by France, the United States ought not to expect to be placed on a better footing than other nations.

"It would be preposterous to suppose, and it cannot have been intended to suggest, that the United States can in any case be bound by treaties to which they were not parties, and in which no attention whatever could have been paid to their interest. Nor can, by any correct analogy, the principles therein adopted, be applied to America.

"The allied powers naturally sought to obtain indemnity in those cases in which they were most interested. Almost all, if not all of them had been, during the late European wars, either at war, or in

alliance with France, whilst the United States had never stood in either of those relations towards her. Hence, it necessarily followed, that the injuries sustained by the subjects of those powers differed essentially from those inflicted by France on American citizens. The Berlin and Milan decrees, so far as they extended beyond prohibitory municipal regulations, although nominally general, applied in fact almost exclusively to the United States. If there was any exception, it was in amount too small, and applied to nations whose weight was too inconsiderable, to be taken into consideration. Of the other powers, many had no interest that indemnities should be obtained on that account, whilst several of them, namely, England, Spain, Holland, Denmark and Naples, had a direct interest that the principle should not be admitted. It will, of course, appear, that, by the convention between France and Great Britain, compensation is to be made by France for all the property of English subjects confiscated or sequestered, not only during the last war, but also during that which preceded the treaty of Amiens, and including even the loss arising from the reduction of the public debt of France, to one third of its nominal amount, with the exception of the seizures and confiscations made in consequence of the laws of war, and of the prohibitory laws. And the exception precisely embraces the principal classes of injuries, for which the United States are entitled to indemnity, since their grounds of complaint against France are the abuse on her part of belligerent rights and the unlawful extension of prohibitory laws beyond their legitimate sphere.

“ Not only were the Berlin and Milan decrees an evident and acknowledged violation of the law of nations; not only the plea of retaliation against England, and of a presumed acquiescence in her aggressions was unfounded, with respect to the United States; not only neither the treaties between France and the allied powers are binding on America, nor the principles adopted in those treaties applicable to the relations in which she stood towards France; but those decrees were also an open infraction of the treaties subsisting between the two countries; namely, of the 12th, 13th and 14th articles of the convention of the 30th of September 1800, which did not expire till the 31st of July 1809. For, it was therein stipulated, that the citizens of either country might sail with their ships and merchandise (contraband goods excepted) from any port whatever, to

any port of the enemy of the other, and from a port of such enemy, either to a neutral port, or to another port of the enemy, unless such port should be *actually* blockaded; that a vessel sailing for an enemy's port without knowing that the same was blockaded, should be turned away, but neither be detained, nor her cargo be confiscated; that implements and ammunition of war, should alone be considered contraband of war; and that free ships should make free goods, extending that freedom even to an enemy's property, on board the ships belonging to the citizens of either country. The French decrees, in violation of those stipulations, after having declared the British islands and possessions in a state of blockade, although they were not pretended to be actually blockaded, made liable to capture and condemnation all American (as well as other neutral) vessels sailing on the high seas, from or to an English port, or even which might have been visited by an English vessel, as well as every species of merchandise belonging to English subjects, or of English origin.

"It is true that, in answer to the American minister who had applied for explanations respecting the construction intended to be given to the Berlin decree, assurances were at first given that it would produce no change in the previous regulations respecting neutral navigators, nor in the convention with the United States. This construction, which gave to that decree the character only of a prohibitory municipal law, was adhered to during the ten first months which followed its promulgation; and it was only in September 1807, that merchandise found on board of neutral vessels at sea was declared liable to condemnation, merely on account of its being of British growth or manufacture. This fact is here stated for the purpose of observing that the assurances which had thus been given, and the practical construction thus first put on the Berlin decree, prevented the early opposition which otherwise the United States would have made to it; and that this supposed acquiescence on their part, served as a pretence for the British orders in council of November 1807, which were immediately followed by the French decree of Milan.

"The decrees and orders of the French government, which applied exclusively to the United States, will now be noticed.

"Assailed by the simultaneous aggressions of the two belligerent powers, the first step of the American government was to withdraw

the commerce of the United States from the depredations to which it was every where exposed. An embargo was laid in the latter end of the year 1807, on all their vessels: and notwithstanding the extraordinary privations and the great loss of revenue which were incurred, that measure was persevered in during fifteen months. In the mean while, strong remonstrances were made to the French and English governments, on the subject of their unlawful acts. Not only was the appeal to their justice fruitless, but it appears that, by an order said to have been issued at Bayonne, on the 17th of April 1808, all American vessels then in the ports of France, or which might thereafter come into them, were directed to be seized, on the pretence that no vessel of the United States could then navigate, without infringing a law of the United States, as if the infraction of a municipal law could be lawfully punished by a foreign power; as if it had not been notorious that a number of American vessels, which were abroad when the embargo became known to them, remained in foreign seas and countries, in order to avoid the effect of that law.

“The pressure of the embargo on the agriculture and commerce of the United States became such, that Congress found it proper to modify that measure. By a law of the 1st March 1809, the act laying an embargo was repealed with respect to all countries, England and France only excepted, and the vessels and merchandise of both countries were excluded from the United States after the 20th of May following; with the proviso, that in case either France or Great Britain should so revoke or modify their edicts, as that they should cease to violate the neutral commerce of the United States, the commercial intercourse of the United States should be renewed with the nations so doing. This law in its nature was entirely municipal and pacific; and its object was to avoid immediate hostilities and to give further time for negotiations: to withdraw, as far as practicable, the navigation of the United States from the operation of the unlawful acts of both France and England, and to give to both sufficient inducements for repealing their edicts, by the actual privation of the benefits derived from the American commerce, and by the prospect, that in case of such repeal by either nation, she would again enjoy those advantages of which her enemy would continue to be deprived.

“The act was officially communicated on the 29th of April 1809,

by the American minister to the French government. It was not at that time treated as hostile ; and if it produced no favourable change, no remonstrance was made against it. But, towards the end of the same year, orders were given to seize all the American vessels in France or in the countries occupied by her arms : and after a great number had been thus seized, principally in Spain and in Holland, an imperial decree was, on the 23d March 1810, issued at Rambouillet, ordering or rather confirming that seizure, extending it to all American vessels which had entered France or those countries since the 20th May 1809, and directing that the product of the sales should be deposited in the *caisse d'amortissement*. The act of Congress of 1st March 1809, was alleged as the motive for that outrageous measure. In point of fact, it is not believed that any vessel, the property of French subjects, had been forfeited for a violation of that act. At least it is not recollected that any application was made for the remission of such forfeiture, to the treasury department, which, by the law, was authorized to grant such remissions, and would certainly have done it, in any case where the law might not have been within the knowledge of the parties. But it cannot be necessary seriously to discuss a plea, which was evidently but a pretence for plunder. It will be sufficient to observe, that the gross injustice of the Rambouillet decree consists in its retrospective operation ; and that if the French government had promulgated an order, excluding American vessels from the ports of France and of the countries occupied by her arms, and pronouncing the penalty of confiscation after due notice of that order, American citizens who might have voluntarily and knowingly violated the provisions of what was only a municipal law, would have been justly liable to its penalties.

“ The American property seized or captured by virtue either of those four general decrees, or of special orders, which are but partially known to the government of the United States, may, in reference to its present situation, be classed under two general heads, viz : that which has never been condemned, and that which has been actually confiscated.

“ The first class embraces the vessels and cargoes burnt at sea, and those which have been sequestered.

“ The vessels and cargoes sequestered, and not condemned, consist principally of those seized at St. Sebastian and other places, in



the latter end of the year 1809, and in the beginning of 1810, and sold by virtue of the decree of Rambouillet. Fourteen vessels which, during that winter, had been driven into Holland, and which, by a particular agreement between the government of that country and that of France, bearing date, it is said, the 16th March 1810, were put at the disposal of France, are of the same description. And exclusively of other special orders of the same nature, which may not be known to me, the cargoes of seven vessels arrived at Antwerp in the beginning of the year 1807, and which were permitted to be landed there, were also sequestered and finally sold, by virtue of an order of government, dated the 4th of May 1810. In all these cases there has been no condemnation, no final decision. The vessels and cargoes were only seized and sold by order of government, and the proceeds of sales deposited in the *caisse d'amortissement*, or in some other public chest.

"The right to demand and obtain a decision on all those suspended cases, is undeniable. Either the proceeds of sales will be restored to the lawful owners by virtue of that decision, or the present government of France must go beyond what had been done by the former government, and decree the final confiscation of property, which even that government had been unwilling to condemn. I will not permit myself for a moment to suppose that there can be any hesitation on that question.

"With respect to property actually condemned, without intending to impair the indisputable right of the United States, to an indemnity for every condemnation made by virtue of decrees, violating the acknowledged law of nations, I will beg leave to add some observations on the manner in which those decrees were executed, for the purpose of showing that an investigation and revision of those condemnations ought to take place, even if it was admitted that France had a right to issue the Berlin and Milan decrees, and to condemn vessels contravening their tenor. The time necessary to obtain information in that respect, has occasioned the delay which has taken place in making this communication, since the last conference I had the honour to hold with your excellency.

"1. These condemnations have, as has already been stated, been made in contravention of an existing treaty; so far at least as relates to property seized or captured prior to the 31st of July 1809.

"2. Several of the condemnations, or rather acts of confiscation,

were made by what has been called "imperial decisions," meaning thereby not those cases where an appeal may have been made from the council of prizes to the council of state, but those instances where the order of condemnation issued from that council, or from Napoleon himself, without any previous regular trial and condemnation by the council of prizes. Such proceedings must be considered as irregular and arbitrary acts, contravening the usages and law of nations. It is sufficiently hard for the neutral that his property should be tried exclusively by the tribunals of the belligerent, where a natural bias exists in favour of the captors. It is at least necessary that the decisions should be made by a regular and permanent tribunal, acting according to fixed rules, and affording every security of which such an institution is susceptible. But the United States have a right to demand that those imperial decisions should be annulled not only as contravening the usages and law of nations, but as violating also an existing treaty. It had been stipulated by the 22d article of the convention, of the 30th September 1800, "that, in all cases the established courts for prize causes in the country to which the prizes might be conducted, should alone take cognizance of them." Of twenty-seven vessels and cargoes (captured or seized prior to the 1st of November 1810) which, as appears by a list now before me, were condemned by imperial decisions, eighteen had been seized or captured, prior to the 31st of July 1809, the day on which the convention expired.

"3. I have been assured that, upon investigation, it will be found that some of the decisions of the council of prizes itself, have taken place, without observing the forms prescribed by law; without giving an opportunity to the parties of bringing their proofs; without an examination of the ship papers, and, in fact, in obedience to an imperial order. A decision of the council, dated 10th September 1811, and by which six ships and cargoes were at once condemned, is particularly mentioned.

"4. The retrospective operation of the Rambouillet decree has already been mentioned. It will also be found that, in several instances, the Milan decree has received a similar construction, and that vessels have been condemned for having contravened that decree, which could not have known its existence, having sailed from American ports either before, or a short time after, it had been is-

sued, and the alleged infraction of the decree itself having, at least in one instance, taken place prior to its date.

"5. It might have been expected, that, when the Berlin and Milan decrees were declared to be revoked from and after the 1st of November 1810, no further condemnations would take place with respect to cases not yet decided at that time; notwithstanding which, it appears that forty-eight ships and cargoes, previously seized or captured, were condemned subsequent to that day, namely, by the Council of Prizes, eighteen before, and ten after, the 28th of April 1811; and by imperial decisions, eleven before, and nine after, the last mentioned day. Yet the decree of that day (28th April 1811) enacts and declares, that the Berlin and Milan decrees are, from and after the 1st November 1810, definitively considered, as if they had not existed (*comme non avenus*) with respect to American vessels.

"6. Several condemnations were made for frivolous pretences, of vessels captured after the 1st Nov. 1810, or, in other cases which the general decrees could not reach; such as alleged irregularities in the certificates of origin, or in other ship papers; presumed navigation under British convoy; mutiny on board; intention to remit the proceeds of sales through England.

"It appears, from the preceding statement, that, independent of the illegality of the Berlin and Milan decrees, there is sufficient cause for the revision of the condemnations which have taken place. Nor is there any thing novel in that course. A number of unlawful captures of American vessels having been made by Great Britain during the commencement of her war with France, particularly by virtue of certain British orders in council, of the 6th November 1793, it was agreed, by the 7th article of the treaty of November 1794, between the United States and England, that full and complete compensation should be made by the British government for the losses and damage sustained by citizens of the United States, by reason of *irregular or illegal captures or condemnations* of their vessels and other property, under colour of authority or commissions from his Britannic Majesty; and a sum exceeding twelve hundred thousand pounds sterling, in specie, was actually paid to American citizens, by the decision of the joint commission appointed in conformity with the said treaty.

"From this view of the subject, I have the honour to propose to

your excellency an arrangement, founded on the following basis, in which, without abandoning the just rights of the citizens of the United States, a positive stipulation is avoided, which would, at this time, bind the government of France to make compensation generally for all the condemnations under the Berlin and Milan decrees.

“ 1st. That the government of France will engage to make compensation to the citizens of the United States: 1. For all vessels and cargoes captured, seized, or sequestered, which have not been definitively condemned by the Council of Prizes, and the proceeds of which were placed either in the public treasury, in the *caisse d’amortissement*, or in any other public chest; and also for all vessels and cargoes destroyed at sea, and likewise not condemned by the Council of Prizes: 2. For the losses sustained by reason of such other irregular or unlawful seizures, captures, or condemnations, as will be decreed, by a joint commission, to have been made contrary to public law and justice, or in contravention of existing treaties.

“ 2d. That a joint commission (or commissions) shall be established, with power, 1. To liquidate the amount due for property either destroyed at sea, or sequestered and not definitively condemned as aforesaid: 2. To decide in what other cases of irregular or unlawful seizures, captures, or condemnations, the government of France is justly bound to make also compensation, and to what amount.”

This exposition was made in the autumn of 1816. No answer has been given to it by the French government, and though the validity of the claims has never been denied, care has been used to avoid, on all occasions, a discussion, not only of the principle, on which they rested, but of the details, embraced in the different cases. This remark applies to the claims in general; as to the vessels burnt at sea, and those, the proceeds of which had been sequestered and deposited in the *caisse d’amortissement*, M. de Richelieu, soon after the receipt of Mr. Gallatin’s letter, observed that his government was disposed to propose an indemnity, but this has never been done. In the face of a convention, concluded at the period of the restoration, by which France agreed to pay the demands of the subjects of all the European

powers, that government could not, with the least shadow of consistency, refuse to assume those of the citizens of this country. It was supposed in the outset, that the European claims would not exceed 150,000,000 of francs, but having in fact amounted to a sum, much beyond all previous calculation, the French minister pleaded the total inability of his government to enter, at that embarrassing, disastrous time, into fresh engagements. And without rejecting absolutely the demands of our citizens, he considered a silent postponement of the subject the most desirable course. In the summer of 1817, M. de Richelieu informed Mr. Gallatin, he wished it understood, that the postponement for spoiliations was not a rejection, that a portion of them was considered as founded in justice, that he was not authorized to commit his government by any positive promise, but that it was their intention to make an arrangement for the discharge of just demands, as soon as they were extricated from their present embarrassments: still he insisted on his former ground, that they could not, at present, recognise the debt, or adjust its amount.

The American government did not seek for a discharge of these claims;—merely a liquidation of them. During the two years, immediately succeeding the second return of the king, when a stock, bearing an interest of 5 per cent., to the amount of 460,000,000 of francs, had been created for the benefit of the European creditors, we are obliged to attribute to any thing, but a sense of justice, the refusal of the French ministry, even, to admit a discussion and examination of our demand. To allow the doubtful and exaggerated claims of European creditors, and to create a valuable stock with a high rate of interest by way of indemnity for them, is a feeble apology for denying even a hearing to the American. If this country had urged an immediate payment, the answer would have been a sufficient, certainly, a reasonable one, that the impoverished condition of the kingdom rendered the measure extremely difficult. We pressed only for a liquidation, and it would have been extraordinary, indeed, if we had suffered our claims, so obviously just, of

so large an amount, susceptible, as they are, of proof and analysis, to lie dormant and neglected, when the agents of the smallest states in Germany were extorting, with a zeal and pertinacity, savouring of any thing, but regard to the situation of the French government, not only discussions, but payments for demands, to say the least, rendered complicated and apocryphal by long standing, an inflated character, and obscurity and uncertainty of origin. But they were presented under the patronage of half a million of men in arms, and as the American claims were not accompanied with the same advantages, a consideration of them has been delayed from time to time, till an opportunity was offered France, by an unlooked for circumstance, of bringing the negotiation absolutely to a close. The United States forbore to press their claims during the time of the occupation of France by the allied troops, and yielded to the representations of that government of the impossibility, they were under, on account of the magnitude of the European demands, to undertake a liquidation of them. But when the troops were withdrawn, and a final adjustment made of the latter claims, endeavours were used, both in formal communications and in conferences, to procure an official examination and some sort of provision for them. But all arrangements were carefully avoided to the degree, that the original letter of Mr. Gallatin of November 1816, was not only never answered, but we have no recollection of observing, in any of the correspondence of the time, an official acknowledgment of its having been received. How long this mode of treating the subject would have been persevered in, would have depended principally, we imagine, on the forbearance, the American government would have thought proper to have exercised, but soon after the commercial convention of 1822 was concluded, a new obstacle arose, immediately seized upon by France, and of which, thus far, a successful use has been made. We perceive no intimation of this extraordinary pretension on the part of France till the summer and autumn of that year. We shall give it in the words of M. de Villèle in a letter of November 1822 :

"In this spirit of reciprocal justice, I have received the claims, which you have done me the honour to transmit to me, and without prejudging any thing in their regard, I must first of all, sir, remark to you, that France has, also, claims pending, or to be produced to the government of the United States. It would appear agreeable to the interest of the two parties and to the reciprocity of justice and of protection, to which the subjects of the two states have equally a right, that these affairs should be examined and arranged unanimously by way of negotiation.

"His Majesty's intention would be, that these claims and the other points in dispute upon which the convention of 24 June has not been able to pronounce, should be the object of this negotiation, in order to terminate simultaneously and in a definitive manner every dispute between the two states, especially in what concerns the duties, received in Louisiana on the French commerce, contrary to the tenor of the eighth article of the treaty of cession."

After six years delay, postponement and absolute denial of a liquidation, or even an examination, or an official notice of the state paper, in which the subject was properly and forcibly brought under the consideration of the foreign government, when not the slightest suggestion of a more favourable disposition fell from any quarter, and this country appeared to be patiently, though very unwillingly, waiting for that auspicious juncture of affairs, when the business could be presented with some degree of effect, and reinforced by collateral considerations, a new course and shape is unexpectedly given to it. For this change of policy we are probably indebted to the accidental appearance of a stipulation, which the address of French diplomatists has invested with a degree of importance, sufficiently great, to induce them to venture upon the investigation of the American claims. Though the affair has now been forced, by an unnatural process, into another channel, this country has not the least reason to congratulate itself upon that circumstance, nor is the prospect of a speedy and satisfactory adjustment, at all, increased. The claims are good; they have been officially presented; they admit of an easy and rapid investigation,

and we have little doubt, that France will ultimately yield to the firmness and steadiness, with which this demand will be maintained. Occasional allusions have been made to this matter from the date of the extract of M. de Villele's letter to the present time, but no impression has been made on the French government. We shall close this account by reciting a passage from one of the last letters of Mr. Gallatin, which contains all the information to be afforded in relation to it.

"I have special powers to negotiate a convention, providing for the just claims of citizens of the United States against France, as also for the like claims of French subjects against the United States, with such person or persons, as may have a like authority from his most Christian Majesty.

"As minister of the United States, I am authorized to discuss the question, respecting the construction of the 8th article of the Louisiana treaty, and to give and receive explanations on that subject. But the negotiation on that point, having been transferred to Washington, no special powers in that respect have been transmitted to me. I had understood in the course of the conference, I had the honour to have with your excellency on the 23d of September, and had accordingly written to my government, that it was not intended to insist, that that subject should be blended with that of private claims. It is, indeed, obvious that it would be utterly unjust to make the admission of these to depend on the result of a negotiation on a subject, with which they have no connexion whatever, and the difficulties, respecting which, are of a date, posterior to that of the claims.

"All the representations, which his majesty's government has made to that of the United States, whether on private or on public subjects, have uniformly been taken into consideration and received that attention, to which they were so justly entitled. In no instance has the government of the United States declined to open a discussion on any subject thus offered to their consideration by France, or made it a preliminary condition, that the discussion should, also, embrace some other subject, in which they might happen to take a greater interest. The question, respecting the 8th article of the Louisiana treaty, has in particular been the sub-



ject of a voluminous correspondence in the course of which the arguments in support of the construction, insisted on by each party respectively, were made known to the other. I have, in the meanwhile, for six years made unceasing applications to his majesty's government for the settlement of claims to a vast amount, affecting the interest of numerous individuals, and arising from flagrant violations of the law of nations and of the rights of the United States, without having ever been able to obtain to this day satisfaction in a single instance, or even that the subject should be taken into consideration and discussed. After so many vexatious delays, for which different causes have at different times been assigned, it cannot now be intended again to postpone the investigation of that subject by insisting that it should be treated in connexion with one foreign to it, and which has already been discussed. The United States have, at least, the right to ask, that their demands should, also, be examined and discussed, and, I trust, that since I am authorized to treat, as well concerning the claims of French subjects against the United States, as respecting those of American citizens against France, a distinct negotiation to that effect will be opened without any further delay."

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#### NAPLES.

This country has claims on the government of Naples of similar character and resting on the same foundation, with those, of which an account has just been given. William Pinkney of Baltimore, appointed, in the spring of 1816, minister to Russia, was furnished with a similar commission and a letter of credence to Naples, and with instructions to present the American claims. He arrived there in August of the same year in the Washington line of battle ship, and having remained in that capital a few weeks, went into a brief discussion of the subject, which is ably stated in his letter of August 24, 1816, to the Marquess di Circello, minister of state.

"The undersigned is sure, that the appeal, which he is about to make to the well known justice of his Sicilian majesty in the

name and by the orders of his government, will receive a deliberate and candid consideration ; and that if it shall appear, as he trusts it will, to be recommended by those principles, which it is the interest as well as the duty of all governments to observe and maintain, the claim, involved in it, will be admitted effectually and promptly."

"It cannot but be known to his excellency the Marquess di Circello, that, on the 1st July 1809, the minister for foreign affairs of the then government of Naples addressed to Frederick Degan, Esq. then consul of the United States, an official letter, containing an invitation to all American vessels, having on board the usual certificates of origin and other regular papers, to come direct to Naples with their cargoes ; and that the same minister caused that invitation to be published in every possible mode, in order that it might come to the knowledge of those, whom it concerned. It will not be questioned, that the promise of security, necessarily implied in this measure, had every title in the actual circumstances of Europe to the confidence of distant and peaceable merchants. The merchants of America, as was to have been expected, *did* confide ; upon the credit and under the protection of that promise they sent to Naples many valuable vessels and cargoes, navigated and documented with scrupulous regularity, and in no respect obnoxious to molestation ; but scarcely had they reached the destination, to which they had been allured, when they were seized without distinction as prize, or as otherwise forfeited to the Neapolitan government upon pretexts, the most frivolous and idle. These arbitrary seizures were followed with a rapacious haste by summary decrees, confiscating, in the name and for the use of the same government, the whole of the property, which had thus been brought within its grasp, and these decrees, which wanted even the decent affectation of justice, were immediately carried into execution against all the remonstrances of those, whom they oppressed, to enrich the treasury of the state."

"The right of the innocent victims of this unequalled act of fraud and rapine to demand retribution cannot be doubted. The only question is, from whom are they entitled to demand it ? Those, who at that moment ruled in Naples, and were, in fact and in the view of the world, the government of Naples, have passed away before retribution could be obtained, although not before it was required, and if the right to retribution regards only the per-

sons of those rulers, as private and ordinary wrong doers, the American merchant, whom they deluded and despoiled in the garb and with the instruments and for the purposes of sovereignty, must despair, forever, of redress."

"The general principle, that a civil society may contract obligations through its actual government, whatever that may be, and that it is not absolved from them by reason, simply, of a change of government or of rulers, is universally received as incontrovertible. It is admitted, not merely by writers on public law as a speculative truth, but by states and statesmen as a practical rule, and accordingly history is full of examples to prove, that the undisturbed possessor of sovereign power in any society, whether a rightful possessor or not, with reference to other claimants of that power, may not only be the lawful object of allegiance, but, by many of its acts in quality of sovereign *de facto*, may bind the society and those, who come after him, as rulers, although their title be adverse to, or even better than his own. The Marquess di Circello does not need to be informed, that the earlier annals of England in particular abound in instruction upon this head.

"With regard to just and beneficial contracts, entered into by such a sovereign with the merchants of foreign nations, or (which is the same thing) with regard to the detention and confiscation of their property for public uses, and by his authority in direct violation of a pledge of safety, upon the faith of which, that property arrived within the reach of confiscation, this continuing responsibility stands upon the plainest foundation of natural equity.

"It will not be pretended, that a merchant is called upon to investigate, as he prosecutes his traffic, the title of every sovereign, with whose ports and under the guaranty of whose plighted word he trades. He is rarely competent. There are few in any station, who are competent to an investigation, so full of delicacy, so perplexed with facts and principles of a peculiar character, far removed from the common concerns of life. His predicament would be, to the last degree, calamitous if, in an honest search after commercial profit he might not take governments, as he finds them, and consequently rely at all times upon the visible, exclusive, acknowledged possession of supreme authority. If he sees all the usual indications of established rule, all the distinguishing concomitants of real, undisputed power, it cannot be, that it can

be his duty to discuss mysterious theories above his capacity, or foreign to his pursuits, and, moreover, to connect the results of those speculations with events, of which his knowledge is either imperfect, or erroneous. If he sees the obedience of the people and the acquiescence of neighbouring princes, it is impossible, that it can be his duty to examine before he ships his merchandise, whether it be fit, these should acquiesce, or those obey. If, in short, he finds nothing to interfere with or qualify the dominion, which the head of the society exercises over it and the domain which it occupies, it is the dictate of reason, sanctioned by all experience, that he is bound to look no further.

"It can be of no importance to him that, notwithstanding all these appearances, announcing lawful rule, the mere right to fill the throne is claimed by, or, even, resides in another than the actual occupant. The latent right, (supposing it to exist) disjointed from and controverted by the fact, is to him nothing, while it continues to be latent. It is the sovereign only in possession, that it is in his power to know. It is with him only that he can enter into engagements. It is through him only that he can deal with the society. And if it be true, that the sovereign in possession is incapable, on account of a conflict of title between him and another, who barely claims, but makes no effort to assert his claim, of pledging the public faith of the society and of the monarch to foreign traders for commercial and other objects, we are driven to the monstrous conclusion, that the society is, in effect and indefinitely, cut off from all communication with the rest of the world. It has and can have no organ, by which it can become accountable to, or make any contract with foreigners, by which needful supplies may be invited into its harbours, by which famine may be averted or redundant productions be made to find a market in the wants of strangers. It is, in a word, an outcast from the great community of nations, at the very moment, too, when its existence in the form, which it has assumed, may every where be admitted. And, even, if the dormant claim to the throne should, at last, by a fortunate coincidence of circumstances become triumphant and unite itself to the possession, this harsh and palsying theory has no assurance to give either to the society, or to those who may incline to deal with it, that its moral capacity is restored, that it is an outcast no longer, and that it may now, through the protecting

will of its new sovereign, do what it could not do before. It contains, of course, no adequate and certain provision against even the perpetuity of the dilemma, which it creates. If, therefore, a civil society is not competent, when in entire possession of the sovereignty, to enter into such promises to the members of other societies, as necessity or convenience may require, and to remain unanswerable for the breach of them, into whatsoever shape the society may ultimately be cast, or in whatsoever hands the government may ultimately fall; if a sovereign, entirely in possession, is not able, for that reason alone, to incur a just responsibility in his political or corporate character to the citizens of other countries, and to transmit that responsibility, even, to those, who succeed him by displacing him, it will be difficult to show, that the moral capacity of a civil society is any thing but a name, or the responsibility of sovereigns any thing but a shadow. And here the undersigned will take the liberty to suggest, that it is scarcely for the interest of sovereigns to inculcate as a maxim, that their lost dominions can only be recovered at the expense of the unoffending citizen of states in amity, or, which is equivalent to it, to make that recovery the practical consummation of intermediate injustice, by utterly extinguishing the hope of indemnity and, even, the title to demand it.

“The undersigned will now, for the sake of perspicuity and precision, recall to the recollection of his Excellency the Marquess di Circello the situation of the government of Murat at the epoch of the confiscations in question. Whatever might be the origin or foundation of that government, it had for some time been *established*. It had obtained such obedience as, in such times, was customary, and had manifested itself, not only by active internal exertions of legislative and executive powers, but by important external transactions with old and indisputably regular governments. It had been (as long afterwards it continued to be) recognised by the greatest potentates as one of the European family of states, and had interchanged with them ambassadors and other public ministers and consuls. And Great Britain by an order in council of the 26th April 1809, which modified the system of constructive blockade, promulgated by the orders of November 1807, had excepted the Neapolitan territories with other portions of Italy from the operation of that system, that neutrals might no longer be prevented from trading with them.”

—“The wrong, which the government of Murat inflicted upon American citizens, wanted nothing, that might give to it atrocity or effect as a robbery, introduced by treachery ; but, however pernicious or execrable, it was still reparable. It left in the sufferers and their nation a right, which was not likely to be forgotten or abandoned, of seeking and obtaining ample redress, not from *Murat* simply, (who individually was lost in the sovereign) but from the government of the country, whose power he abused. By what course of argument can it be proved, that the incontestable right, from which that government could never have escaped, has been destroyed by the reaccession of his Sicilian Majesty, after a long interval, to the sovereignty of the same territories ?

“That such a result cannot in any degree be inferred from the misconduct of the American claimants is certain ; for no misconduct is imputable to them. They were warranted in every view of the public law of Europe in holding commercial communication with Naples, in the predicament in which they found it, and in trusting to the direct and authentic assurances, which the government of the place affected to throw over them as a shield against every danger. Their shipments were strictly within the terms of those assurances, and nothing was done by the shippers or their agents, by which the benefit of them might be lost or impaired.

“From what other source can such a result be drawn ? Will it be said, that the proceeds of these confiscations were not applied to public purposes during the sovereignty of Murat, or that they produced no public advantages with reference, to which the present government ought to be liable ? The answer to such a suggestion is, that let the fact be as it may, it can have no influence upon the subject. It is enough, that the confiscations themselves and the promise of safety, which they violated, were acts of state, proceeding from him, who was then and for several successive years the sovereign. The derivative liability of the present government reposes, not upon the good either public or private, which may have been the fruit of such a revolting exhibition of power, emancipated from all the restraints of principle, but upon the general foundation, which the undersigned has already had the honour to expose.

“To follow the proceeds of these spoliations into the public treasury, and thence to all the uses to which they were finally made subservient, can be no part of the duty of the American claimant. It is a task, which he has no means of performing, and

which, if performed by others, could neither strengthen his case nor enfeeble it. And it may confidently be insisted not only that he has no concern with the particular application of these proceeds, but that, even, if he had, he would be authorized to rely upon the presumption, that they were applied as public money to public ends, or left in the public coffers. It must be remembered, moreover, that whatever may have been the destiny of these unhallowed spoils, they cannot well have failed to be instrumental in meliorating the condition of the country. They afforded extraordinary pecuniary means, which, as far as they extended, must have saved it from augmentation of its burdens, or, by relieving the ordinary revenue, made that revenue adequate to various improvements either of use or beauty, which, otherwise, it could not have accomplished. The territories, therefore, under the sway of Murat must be supposed to have returned to his Sicilian Majesty less exhausted, more embellished and more prosperous, than if the property of American citizens had not, in the mean time, been sacrificed to cupidity and cunning. It must further be remembered, that a part of that property was notoriously devoted to the public service. Some of the vessels, seized by orders of Murat were, on account of their excellent construction, converted into vessels of war, and as such commissioned by the government; and the undersigned is informed, that they are now in the possession of the officers of his Sicilian Majesty, and used and claimed as belonging to him."

This letter, after some delay, was answered by the Marquess di Circello, though Mr. Pinkney had at the time left Naples for St. Petersburg. We shall give some extracts from the reply, and the reader will perceive, that the Neapolitan government have declared themselves, by no means, responsible for these demands. In this position, they have gone one step beyond any other European state.

"The demand of Mr. Pinkney would not be, on this account, the less invalid, since the confiscation and sale of the American vessels and cargoes were acts, which proceeded directly from the power and from the will of Bonaparte. There exists, in fact, in the archives of the treasury a report of the minister, Agar, who presided over that department in 1809, addressed to Murat, who was then at Paris.

"The minister relates in this report, that two American ships had arrived at Naples, one from Salem, the other last from Algiers, laden with colonial produce, and that the necessary orders had been given to put the same under sequestration, conformably to the directions, antecedently issued from higher authority, with respect to the other vessels, arrived at Naples before the departure of Murat for Paris.

"He proceeds then to point out the great benefit, which the treasury would derive from opening the market to the colonial produce lying on board those ships, or in the custom house of Naples, by the duties, which would be collected upon the sale of it, and upon the export of the oils which the Americans would take as return cargoes.

"The minister remarks, in fine, that the confiscation itself of the American vessels and cargoes was but an inconsiderable resource, compared with the very great advantage, which would have resulted to the treasury from an active American trade, could it have been tolerated in the ports of the kingdom.

"Murat did not deem himself authorized to decide in any way, and submitted the report to his brother in law Napoleon, who decreed in margin, that the vessels and cargoes should be confiscated, because the embargo laid in the ports of the United States induced him to believe, that the produce must be British property, and its introduction into the continent a breach, therefore, of the too famous Berlin and Milan decrees.

—"Murat then, let it be repeated, was but the passive instrument of the will of Bonaparte in the confiscation of the American ships, and if this could give birth to responsibility, such responsibility should no longer be imputed to the country, over which he reigned, and still less to the government, which has there resumed its lawful authority.

"The other and not less important consequence is, that the treasury, which was the fund of the State, never enjoyed the proceeds of the confiscations, and that, instead of being employed to alleviate the burdens of the people, or applied to the improvement or embellishment of the country, as is supposed in the note of the 26th of August, those proceeds only served to feed the caprices and the oriental pomp of the family of Murat and his adherents."

No further measures have been adopted in regard to the Neapolitan claim.



## CHAPTER VIII.

### RELATIONS WITH PORTUGAL.

*Trade in Mediterranean, exposed to Barbary cruisers, first led to diplomatic intercourse—Humphreys sent to Lisbon in '91—Freire to this country—Legation suspended in 1801—Smith in '97—Portugal, small possessions in Europe—Brazil, an empire—In time of Pombal, court had design of going there—Portuguese, maritime people—Court prepared to leave Europe in 1802—Finally sailed in 1807, for Rio, just as French were entering Lisbon—Coronation of Don Pedro in Brazil—The first in the New World—Relations with Portugal—Sumpter and Graham ministers—Privateers—Correa de Serra—Dearborn appointed to Lisbon—Commercial treaty—Attempts a negotiation—Treaty with England and state of kingdom delay it—Ultra royal revolution in Portugal—England and Holy Alliance antagonists—Dearborn's account of Don Miguel's revolt and submission—Singular transaction—Obtains permission to return to United States—Offer of box with brilliants—Brent, Chargé—Constancio and Pereira Portuguese Chargés.*

THE state of our commerce in the Mediterranean, first led to a diplomatic intercourse with Portugal. The circumstances of alliances, boundaries and original claims have conferred a peculiar character and uncommon importance upon all the relations, both of the confederation and the present government, with France, Spain and England. And though Portugal fell within the limits of the European trade, allowed by the mother country, we are not aware that the commerce of that nation, or its situation, or any other consideration, presented motives to a correspondence, which were not common to nearly all the European states. But the war, in which Portugal was engaged with Algiers in the early part of President Washington's administration, suggested the expediency of sending a minister to that court.

It is proper to state, that some negotiation took place with Portugal soon after the general peace of 1783, not, however, invited by this country, and, as it was never brought to a conclusion, the discussions were probably undertaken by that government for the purpose of ascertaining, whether any commercial advantages or markets could be obtained. December 1783, Dr. Franklin wrote to Congress, "that the conclusion of the Portuguese treaty waits only for the commission and instructions of Congress." In the spring of 1786, Messrs. Adams and Jefferson completed with the Portuguese minister, the Chevalier de Pinto, a negotiation as far as the powers of that gentleman would permit him to go.

David Humphreys, of Connecticut, was, in February '91, appointed minister resident, and soon after, this diplomatic courtesy was returned, on the part of Portugal, by the appointment of the Chevalier Freire\* to the United States. In '96, President Washington appointed John Quincy Adams, then minister resident at the Hague, minister plenipotentiary to Lisbon. Before leaving the Hague, however, he was transferred to Berlin. William Lawton Smith, of South Carolina, was in the next year appointed with the same rank to Lisbon; the legation was discontinued in June 1801.

In another part of this work, we have already had occasion to mention the extraordinary results, as it respects one portion of South America, that attended the invasion of Spain in 1807 by Napoleon Bonaparte. A circumstance, perhaps, as remarkable, certainly more unexpected, in consequence of the same event, unfolded itself in regard to the Portuguese possessions on that continent;—a humble colony being suddenly elevated to the rank of a kingdom, and one of its principal cities transformed into a royal residence, the capital of a sovereign state. This is contrary to the course of things in modern times. Colonies have become independent, and, in some degree, the competitors of states, from which they sprung; but, with a disposition, certainly filial,

\* The chevalier (Cyprien-Bibeiro) Freire was transferred from this country to Madrid, and on the 29th of September 1801, signed the celebrated treaty of Badajoz between France and Portugal.

to offer an asylum and protection to the parent government, a refuge from its own altars, is a new part for them to perform.

Portugal is distinguished rather by discoveries, remote possessions and commercial adventures, at one period of its annals, than by extent or population of territory in Europe. It is, moreover, the only modern nation, that possesses the classic advantage of having had its early voyages, along the coast of Africa, and maritime enterprises beyond the cape of Good Hope, recorded by the sweet muse of a native epic poet.

Since the middle of the last century, the best portion of the Portuguese dominions has been situated in America. Brazil was equal to the widest empire, but in Europe the narrow border Portugal occupied along the western coast of the Spanish peninsula, hardly exceeded in size one of the little dukedoms, or principalities, with which Germany is studded. The Portuguese government do not appear to have been insensible to this circumstance, or to the advantages of a removal of the seat of the kingdom. At least, Brazil has always been regarded as a spot, to which a safe and honourable retreat could be made, when their independence and sovereignty should be menaced in the old world. There appears now to be little doubt, that a plan of this sort was arranged during the administration of the Marquess of Pombal, when Portugal was so exceedingly pressed by Spain.

During the few years immediately preceding the invasion of Spain in 1807, the situation of the Portuguese had been altogether unsatisfactory and insecure;—never on good terms with their powerful neighbour, then the devoted ally of the Emperor Napoleon, they suffered all the disadvantages, proceeding from a supposed partiality for England, without being able, at all, to profit of the protection of that nation. The treaty of Badahoz of 1802, excited the liveliest and best grounded apprehensions, and in that year, the principal minister of the Prince Regent, M. de Aranjó, proposed, that the seat of government should be transferred to the Ultra Mar. Measures were secretly taken for the embarkation of

the royal family and the crown jewels and treasure, while the French minister and agents at Lisbon were deceived by professions of confidence and attachment. England, it has been said, gave all the aid in her power to this project, and encouraged Portugal in the undertaking, suggesting, that she could easily obtain remuneration for the loss of her narrow dominions in Europe by the conquest of the Spanish colonies in South America. This enterprize, however, was not executed till 1807, just at the moment that a French army, under the command of Junot, was passing the frontiers of Portugal, and after a decree had appeared in the *Moniteur* at Paris, giving notice in a laconic style (only relieved from an air, supremely ridiculous, by the extremely formidable force employed for its execution) of the approaching fall of the ancient house of Braganza. Having made arrangements for the formation of a Regency, the Prince Regent, himself, embarked on the 27th November with the different members of the royal family, the principal functionaries, and a most numerous suite of attendants, together with a vast treasure, said to have amounted to 100,000,000 dollars. He left the Tagus on the 6th December, when the advanced guard of the French army was actually only five miles from his capital, and, accompanied by several English line of battle ships, steered his course for Rio Janerio, where he arrived after a pleasant passage on the 18th of the following January. Before he left Europe he addressed a proclamation to his subjects in Brazil, a feeble production, and without other title to applause than its brevity. This removal has been, also, marked by another circumstance, at least, of some novelty;—the coronation, in February 1818, of the Emperor Don Pedro, the first event of the kind, that has taken place in the new world.

The mind is, perhaps, little affected by the translation of the Portuguese Court, though, in itself, a peculiar and uncommon proceeding. But when it took place, little was thought of driving a king from his throne, or from one hemisphere to another. The attention of the world being directed solely to the two great master hands, that played

the game, transactions of the gravest kind were only important, as they affected, or belonged to the scope and action of the general movement. Besides, maritime enterprises are appropriate to the Portuguese character and condition. Those circumstances, that have made them most known, are founded in bold and judicious expeditions upon the ocean and to remote and unknown regions, and when the true association, belonging to a maritime character, is deeply impressed on the mind, we view with little emotion great changes, as well in the habits as in the position of such people. It is also true, that according to that rule of symmetry and proportion, founded in reasons of defence or utility, which has constituted rivers, seas and mountains the legitimate, or natural boundaries of states and kingdoms, Portugal is, certainly, indebted to any other consideration, than its own strength, for having so long held a feeble, constrained outpost between Spain and the Atlantic.

In the spring of 1822, Henry Dearborn, of Massachusetts, was appointed envoy extraordinary and minister plenipotentiary to the Court of Lisbon. His private instructions, a portion of which are extracted, give an account of the intercourse between the two countries from the time of the transfer to Brazil.

“Independently of the changes in the diplomatic relations of the two countries, which have resulted from the removal of the king from Rio de Janeiro to Lisbon, other accidental circumstances have concurred to cause some irregularity and disorder in them. In the spring of the year 1819, Mr. John Graham was appointed minister plenipotentiary of the United States to the Court of Brazil to succeed Mr. Thomas Sumpter, junior, who had resided there in that capacity, almost from the time of the transfer of the Portuguese government thither. Mr. Graham, within little more than a year from the time of his departure on that mission from the United States, was compelled to return home, and barely lived to reach this country.

“About the same time the Chevalier Correa de Serra, who had for several years resided as the minister plenipotentiary of Portugal in this country, was recalled and left the United States. A resolu-

tion of the senate of the United States in March 1821, recommended to the President the appointment of a minister to the Court of Brazil, but the return of the king of Portugal to Europe, very shortly afterwards, rendered a compliance with this resolution unavailing.

"The departure of that prince from Rio de Janeiro had been preceded by various movements of a revolutionary character, as well there, as in Portugal. He had, immediately before embarking, appointed, as his minister to the United States, the person, who since his arrival in Europe, has acted as his secretary of state for foreign affairs. And it appears that since the revolution there, which has invested the Cortes with a principal portion of the sovereign authority, the policy of maintaining ministers of the plenipotentiary rank from that country has been suspended. A chargé d'affaires has been appointed to repair to Washington, but has not yet arrived. In the mean time, that office has been discharged by the Chevalier Amado Grehon, who had been secretary of legation to Mr. Correa, and recently a Mr. Decosta has been here, and announced himself, as attached to the legation, and to exercise the powers of consul general.

"The usual diplomatic intercourse between the United States and Portugal has thus been, for the last three years, in a great measure, suspended: nor is it probable, that the mission of the United States, now instituted, will be of long duration. There are objects, political and commercial, which require its most serious attention, and which, it is hoped, may be adjusted satisfactorily to both countries by your intervention.

"After the invasion by the Brazilian Portuguese government of Montevideo and the eastern shore of the river La Plata, a revolutionary government under the name of the Oriental Republic of La Plata, and subject to the authority of a military chief, named Artigas, for several years maintained a defensive war, at once, against them and against the rival revolutionary republic, styled the United Provinces of La Plata. The latter, the seat of government of which was at Buenos Ayres, never came to a state of declared war with Portugal, but the Republic of Artigas did, and that commander issued commissions for privateers and letters of marque against the Portuguese, under which the commerce of that nation was, for three or four years, much annoyed. Of the cap-

tures made by these privateers, several were brought into the ports of the United States, and frequent complaints were received from Mr. Correa, that some of the privateers were fitted out within the United States, and partly manned by their citizens. To this complaint every attention, compatible with the rights of the citizens of the United States and with the laws of nations, was paid by this government. The laws, for securing the faithful performance of the duties of neutrality, were revived and enforced. Decrees of restitution were pronounced by the judicial tribunals in all cases of Portuguese, captured vessels, brought within the jurisdiction of the United States. And all the measures, within the competency of the Executive, were taken by that department of the government for repressing the fitting out of privateers from our ports and the enlisting of our citizens in them.

"These measures, however, do not appear to have been altogether satisfactory to the Portuguese government, doubtless, because they were not sufficiently understood by them. Shortly before the Chevalier Correa de Serra left the United States, he addressed to this department several notes, containing lists of Portuguese vessels captured by privateers, alleged to have been fitted out in the United States, or partly officered and manned by citizens of this country. To these lists were added claims of indemnity, to a large amount, upon the United States for the value of these vessels and cargoes, and with them was connected a demand for the appointment of a joint commission, to be appointed by the two governments, to determine and assess the amount of damages to be paid by the United States for these captures. As there was no precedent for the appointment of such a commission under such circumstances, and as not a single case of capture had been alleged, for which the United States were justly responsible, this proposal was, of course, denied, and nothing further was heard upon the subject, until the 1st of April last, when a note was received from the present charge d'affaires of Portugal, leading to a correspondence, copies of which are now furnished you."—"With regard to the proposal, contained in the letter from Mr. Almado of the 1st of April, of a treaty of commerce, in which special advantages shall be granted to the United States, even if it were offered by itself and separately from the inadmissible condition, connected with it, we should not consider it as desirable, or compatible with

the true policy of either nation. We have never sought exclusive advantages in our treaties with any foreign nation. The policy of the United States, on the contrary, has invariably been to form its commercial institutions and engagements on the broadest and most liberal principles of reciprocity. We are neither solicitous nor unwilling to treat with Portugal upon subjects of commerce; but, if we do treat, it must be upon those principles and in conformity with them. The convention of 3d July 1815 with Great Britain, so far as it goes, exhibits the system, upon which we are desirous of settling our commercial arrangements with other nations, and the only one upon which we should be inclined to treat with Portugal."

Mr. Dearborn arrived in the Tagus in August of the same year, and on the 17th of the month was presented to the king, who returned a friendly answer to his protestation of the desire, entertained by the United States, of cherishing and cultivating an amicable and harmonious intercourse. The principal object of this mission was to endeavour to conclude with Portugal a convention, regulating the commerce between the two countries. But the minister arrived at the commencement of those political movements, produced by the establishment of what was termed the constitutional government in Spain, and which ended in a second invasion by France under the auspices of the Holy Alliance. This agitation and excitement of public sentiment, speedily reaching Portugal, that country became, for two years, not only the scene of the active, persevering operations of England against the Holy Alliance, but the government, itself, encountered several violent shocks and alarming vicissitudes. Since the Methuen treaty, Portugal has been little less than a province of Great Britain, occupying in the south of Europe, much the same situation, that Hanover has done in the north. But after the return of the king from Rio Janeiro, and during the successful progress of the violent measures, adopted by the Holy Alliance to reform the political institutions of Spain, the ancient ascendancy of England at Lisbon appeared tottering and evidently on the decline.

There is no spot, where Great Britain has been forced



into so close and angry contact with the confederacy of sovereigns as the peninsula. But though the parties have had the appearance of contending for very different principles and systems of government, yet, after all, we fear, that few of the advantages of the victory will fall to the share of the unhappy people, whose countries have been selected for the ring.

Separate from the difficulties in Europe, Portugal had to contend with the revolutionary spirit of Brazil, already showing symptoms of independence, a circumstance that, also, delayed the negotiations of the United States.

“ LISBON, December 13, 1822.

“ On the evening of the 11th inst. the King asked me, how our negotiation went on, and, when I informed him, that it had been at a stand for some time, he observed, that Mr. Correa had been appointed some time ago to negotiate with me ; I replied, that being a member of the Cortes, he had declined accepting the appointment, and I had been expecting that some other person would have been appointed. He then said, that one must be appointed soon ; from which I conclude that his Majesty does not take a very active part in the transactions of this government, as he did not appear to know that Mr. Correa had declined the appointment, or that any delay had occurred in the negotiations. In addition to all the other circumstances, which I have mentioned, as excuses on the part of this government for procrastination, that, which I consider the most important, is the fear of offending Great Britain, especially since receiving the assurance, that that government would guaranty the integrity of Portugal. This government, knowing that no commercial convention will be agreed to on the part of the United States, but such as will place our merchants on an equal footing with those of the most favoured nation ; and Great Britain being not only the most favoured, but the most peculiarly favoured nation, by the treaty of 1810, which will so far expire in July 1825, as will allow Portugal to make such alterations, as circumstances may require, or as she may deem expedient, and as any treaty or convention, that would be acceptable to the United States, must place us on the same footing with Great Britain, it is very obvious, that this government must, under existing circum-

stances, feel embarrassed and, of course, be disposed to procrastinate the negotiation, which had commenced, informally, with a fair prospect of success."

" 14th.

"The King has frequently mentioned to me the disproportion of the trade of the United States with Lisbon, and that with Rio Janeiro, and has lately asked me, if I had heard of his son's applying to the United States for a number of small frigates, and, also, whether I had received any information from home of the declaration of independence by the people of Brazil; all which enquiries are made with an appearance of anxiety, combined with apparent fears and suspicions, that the United States are encouraging his son and the people of Brazil in their project of throwing off their dependence on the mother country. I have replied, that the inhabitants of the United States will pursue commerce, wherever it could be done lawfully and with profit, and that, until some new regulations were made, they could have no encouragement for sending their ships to Lisbon; that I had no information respecting his son's applying for the purchase of ships in the United States, or of a declaration of independence by the people of Brazil. His Majesty always converses with me freely, and (except his son and Brazil are the topics) very pleasantly and with great frankness."

In January 1823, the Count da Lapa, many years minister at St. Petersburg, was intrusted with the negotiation on the part of Portugal. Some forms of conventions were exchanged, but no solid progress appears to have been made.

"I have not heard from the Count da Lapa since the 10th ultimo, when he agreed to make out the form of the first head of the treaty, and call on me within the course of that week, but, subsequently to our last meeting, a report was made to the Cortes on the subject of the present existing treaty with England, particularly in relation to the article, which stipulates, that certain English manufactures should be admitted into Portugal on paying a duty of fifteen per cent. on their cost. The report concluded by saying, that under existing circumstances, the Portuguese government have the right to suspend the operation of the article alluded to,

until new negotiations should be had on the subject. The report was sanctioned by a vote of the Cortes. I presume that the discussion of this subject by a committee, and by the Cortes has occasioned a long delay on the part of the Count da Lapa. By the above mentioned report it appears, that negotiations have been going on between Portugal and Great Britain for some time with a view, on the part of the former, of effecting such alterations in certain parts of the existing treaty, as would enable her to enter into such liberal and reciprocal commercial treaties with other nations, as would be acceptable. But it appears by the said report, that England, as might be expected, is very unwilling to relinquish any of the exclusive advantages, she now enjoys under the present treaty; and, I am persuaded, that this government still finds itself embarrassed by certain stipulations in her treaty of 1810 with Great Britain, and that to that source the long delays, I have experienced, are to be principally attributed. I am satisfied, however, that the government is very earnestly engaged in endeavouring to effect such arrangements with England, as may be necessary for preparing the way for a liberal and reciprocal treaty with the United States."

In the midst of this arrangement, and while the Cortes were endeavouring to procure an alteration in the treaty with England, an insurrection of an ultra royal complexion broke out in the north of Portugal, headed by Count Amarante. The Cortes, not resisting this movement with much spirit, a counter revolution took place in Lisbon, itself, in June 1823, when their power was demolished, and the constitutional cockade, before universally worn, now entirely disappeared;—new ministers were appointed, the constitutional ones having fled to England;—the Marquess Palmella became secretary of foreign affairs, and an absolute despotism was established. This state of things gave rise to new delays, though it inspired with fresh zeal and animation the endeavours of the French and English in asserting the influence of their respective Courts.

" LISBON, October 16, 1823.

" There are great efforts now in operation, both by France and Great Britain, for securing their respective influence over Portugal. France has invested his most Faithful Majesty with the Orders

of St. Michael and the Holy Ghost with great parade, and Great Britain has followed suit, with the noble Order of the Garter with equal parade, and vastly superior decorations. The respective ministers are, I presume, equally industrious.

"How the race will terminate is uncertain. It is understood, that the ministers of his most Faithful Majesty are nearly equally divided in their feelings between the two contending powers. The late arrival of Lord Beresford is considered as a very strong reinforcement to Sir Edward Thornton, being a great favourite of the King."

In a letter from General Dearborn in May, we have an account of a singular proceeding at Lisbon, and which attracted great attention in Europe :

"As evidence of the unsettled state of this government, an attempt has recently been made to arrest the government from the King. Very early in the morning of the 30th of April, the young prince Don Miguel had the troops assembled at different points; one body of them surrounded the residence of the King at the palace of Bemposta, while detachments were ordered to arrest the Minister for Foreign Affairs, and Minister of War and Marine, together with several members of the King's household, and many other respectable persons. The Minister for Foreign Affairs, the Marquess Palmella, was taken from his house and confined in something like a dungeon in Bellem castle; the other Minister, the Count Subsera, was fortunate enough to effect his escape, and was concealed in a friend's house for a time, and was then received at the house of the French ambassador. Between 9 and 10 o'clock in the morning, it was proposed that the members of the diplomatic corps should meet at the house of the Nuncio, where it was concluded, that it would be proper to endeavour to ascertain, whether the King was a prisoner or not, and that for that purpose, it would be expedient to proceed in a body towards the palace; the whole corps proceeded accordingly, and after passing the great square, where a large body of troops were formed under the immediate command of the Prince, we proceeded to within a short distance of the palace, where we were stopped by a military guard, and compelled to leave our carriages, and then allowed to proceed to and enter the palace in the presence of a large body of troops,

regularly formed. We found the King quite overwhelmed with fear and distress, accompanied by two of his chamberlains and Lord Beresford. The appearance of the diplomatic corps evidently gave him great relief; he was asked, whether he considered himself a prisoner; he said that he could not say, whether he was or not; but that he was surrounded by a body of troops, over whom he had no control. We were informed, that the Queen had arrived at the palace, and was in that part of it, which is exclusively occupied by the Prince. After conversing, and waiting in a state of suspense until about one o'clock, P. M., a letter of proclamation from the Prince was received by the King. In the course of two hours, the Prince arrived with a large body of cavalry, he dismounted, and soon after presented himself to the King, and with the aid of Lord Beresford, made a speech to his father, promising to obey his orders and be an obedient subject,—then, on his knee, kissed the King's hand and promised to remove the troops; and in almost an hour the troops were dismissed. The King then requested the diplomatic corps to stay and partake of a dinner, which he had ordered for them. We stayed, and had an excellent dinner,—then had a short conference with the King, who requested us to call the next day at one o'clock, and we retired. It is very evident from several circumstances that occurred, that the Prince became at last doubtful, as to the strength of his and the King's party, and, therefore, relinquished the project for the present, with the best grace he could; but what is most extraordinary is, the subsequent orders of the King, in which he approves of all that had been done by the Prince, and authorized the arresting and confining persons, without any particular limits; and thus the affairs of this unfortunate country remain at present."

" LISBON, May 14, 1824.

" The King, being apprehensive of another attempt for dethroning him, and his minister, the Marquess Palmella, having found it necessary for the King to take refuge on board a British man of war, concerted measures for going on board the Windsor Castle, a British seventy-four, and on Sunday the 9th instant, about 12 o'clock, with considerable address, he effected his object, accompanied by two of the young princesses. The members of the diplomatic corps immediately hurried on board, excepting myself, confiding in my privilege as a minister, I remained with my fami-

ly. As soon as it was known, that the King was on ship board, terror and consternation pervaded the city, it being generally believed, that the Prince, with the adherents of the Queen, would pursue the most violent measures, and endeavour to cut their way to the throne; but fortunately the Prince, being either intimidated or deceived by the King, went soon after into a boat, and followed the King on board the ship, where he was confined, and in a few hours the city became tranquil. The King issued a proclamation, a printed copy of which I have the honour of enclosing. Having received the enclosed letter from the Marquess Palmella on the night of the 10th, I went on board the ship on the 11th, and was received very graciously by the King. Great numbers of nobility and officers visited the King, among others many of those, who had been released by the King's orders from confinement. None but the King, Prince and Princesses remained on board the ship after bed time. Yesterday being the anniversary of the King's birth day, he received the diplomatic corps on board the ship, where a great number of the nobility and officers attended, and, also, many ladies. At six o'clock, P. M., the Prince sailed for France on board a Portuguese frigate, attended by a British frigate and a French brig of war. The King bestowed many marks of his favour on the members of the diplomatic corps, such as titles and orders, or both, on each member excepting myself; and knowing that I could not receive either, the Marquess Palmella civilly observed to me, that the King would have been happy to have noticed me, as he had done the other ministers, if I could have accepted the same token of respect.

"The late convulsion has probably changed the balance of influence in favour of Great Britain, for the present; how long it may continue, is quite uncertain."

In the winter of 1824 the minister, appearing to have been satisfied, that his endeavours to conclude a commercial convention would prove unavailing, solicited permission to return home, which was granted him in the summer of the same year. He took leave of the King in June, and, on that occasion, a box of diamonds was offered General Dearborn, which he declined in a letter to the Marquess Palmella. "Although I appreciate the liberality of his Majesty in honouring me with the offer of a brilliant present, as a token

of his royal bounty, the fixed regulations of my government, in regard to the usual presents from foreign governments, compel me to decline the honour of accepting the superb box, this day offered me, through the agency of your Excellency, in your usual polite and agreeable manner." Thomas L. Brent was left a chargé, and still remains in that capacity at that court. In 1821, the chevalier Constancio represented Portugal as a chargé in this country; he was succeeded by J. B. Pereira, a diplomatic agent of the same rank.

## CHAPTER IX.

NEGOTIATIONS WITH GREAT BRITAIN CONCERNING  
PAYMENT FOR SLAVES, AND SLAVE TRADE.

*Singular controversy respecting first article in Ghent treaty concerning the removal of slaves—Very difficult to make a treaty not leading to controversies—Explanation and discussion of the subject—Parties disagree—Referred in 1818 to Emperor of Russia—Decides for the United States—Number of slaves removed—Average and total value—England paid \$124,960 as indemnity—Cheves and Pleasants, commissioners—Parts of United States first to abolish slave trade—United States first to declare it piracy—Proceedings of American government on this subject very honourable—England negotiates with powers of Europe for abolition—Efforts at Vienna and other congresses—Declaration of the eight powers—Evasive—No slave trade permitted in 1820 north of the Equator—Only by the Portuguese south—Still, great trade—80,000 slaves removed in one year—French flag much employed—In 1818 England proposed a convention to United States—Not accepted on account of constitutional difficulties—House of Representatives authorize President to negotiate with European powers—Propose convention to England—That country declares slave trade piracy—Convention agreed on—Provisions—Allows right of search—Dangerous—Discussion of that topic—Senate finally reject the convention—Not for right of search—Reasons—Last official act of the government—Not a local question.*

IN the course of 1815, a singular controversy suddenly arose, as to the meaning of a short clause in the first article of the treaty of peace with England, concluded at Ghent in December of the previous year. It is, in every way, remarkable, that an instrument of so brief and simple a nature, prepared by parties, both using the same mother tongue, studiously excluding from the terms of the contract the complicated and vexatious questions of colonial trade and neutral



and belligerent rights, should have led to discussions, so wearisome and, in the end, unprofitable. But the experience of the United States has shown, thus early, the extreme difficulty of hitting upon phrases and expressions, even where the stipulations are most obvious and arbitrary, that shall escape the refinements of diplomatic criticism. We have a striking specimen of this sort of metaphysics in the treaty of '78 with France, and of '83 with England, but, perhaps, the most notable instance is that of '95 with Spain, concerning the cession of Louisiana. Indeed, in the case of several of these instruments, it has taken more time to explain than negotiate them.

On the present occasion, it does not appear, there was much ground for difference of opinion. The first article of the treaty stipulated that,

"All territory, places and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in said ports or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other property."

The phraseology of this sentence is loose, though the meaning appears sufficiently obvious. The apparent obscurity, undoubtedly, arises from an attempt to render the article too concise, and to crowd within the same general stipulation several sorts of property, captured and detained in a variety of ways. The whole difficulty would have been avoided if the paragraph had ended at the words, "*the treaty*," and a new sentence been framed to meet the condition intended to apply to the concluding words, "*or any slaves or other property*." But under this article the British officers refused to deliver the slaves, because, as it was not intended to prohibit all private property from being carried away from the places restored, some limitation was necessary;—and the same limitation was made to apply to public as well as private. The construction of the English government was this;—all slaves, or other private property, originally cap-

tured in said places, and which shall remain therein upon the exchange of the ratifications of this treaty, shall not be carried away, or destroyed. The stipulation required, that places should be restored without causing destruction or carrying away private property.—What, therefore, was not in the place to be restored, at the time of the ratification, could not be carried away, or destroyed. The distance, to which the property was removed, or the time of its removal, could not impeach the soundness of this argument. It should, also, be observed, that the demand of the American government is not a full, unconditional restitution of all private, or public property. It does not apply to private property, taken in such places at all times, but only to such as belonged originally to those places, and remained within the limits of the United States at the time of the ratifications. Therefore, in the American construction, the words, "*carrying away*," apply to public as well as private property;—these words govern both parts of the sentence. Of course, it is arbitrary to contend, that the intervening expression should be made to apply to one and not to the other description of property. But this construction is, in fact, more extensive than the one, for which the United States contended, because wherever private property might be captured, without regard either to time or place, it must be restored, if within the limits of the United States, at the ratification;—neither could any property have been carried away at any time of the war, without violating this article. This construction would, therefore, justify claims on the part of the American government, which it could not be their intention to maintain, and which they have never developed.

We shall state in a single paragraph the construction of the United States.

"The stipulation in the article amounts to this, that each party shall restore without delay, all the territory, places and possessions, which had been taken by it with the exception of certain islands: that neither shall destroy or carry away artillery or public property, provided they be, at the time of the exchange of ratifications, in the forts, or places, in which they were originally cap-

tured : that neither shall carry away slaves, or other private property. The restraint, provided against the carrying away of the latter, is evidently connected with the great object of this article, the restoration of territory, places and possessions, and not with forts and places in the qualified sense suggested ; in which sense it applies to artillery and other public property only, the ordinary and proper appurtenances of forts and other military posts."

The restrictive expression, being put after artillery and other public property, proves it was intended to apply to that alone ;—otherwise it would have been much more natural and more in conformity with the idiom of the language to have placed the whole at the end of the sentence. The slaves, in question, were not taken in forts or other places, where the troops happened to be at the time of the ratification :—they came originally from the country, and shores of the deep and numerous bays along the southern coast. This fact was well known to the commissioners of both nations ; it is not, therefore, to be supposed, that the parties could have agreed to a stipulation without meaning. As the article stipulated that slaves should not be carried away from the places captured, it seemed a gross inconsistency to remove, under the sanction of the provision, all slaves in possession of the British. The article was intended to protect private property, not subject to capture by the laws of war. No difficulty existed as to the artillery, found in the ports and places captured ;—it could easily be ascertained ;—but the case was widely different with the slaves. Another design of the stipulation is very obvious,—the time when public property could be carried away was limited, that is to say, it could not be removed, if in the forts at the time of the exchange of ratifications, but there was no limitation in regard to private property. Apart from the grammatical construction of this particular phrase, there are some general considerations, applicable to a state of war, which may be introduced in a collateral way, to assist in a right determination of the discussion.

The distinction between private property on land and at sea is well recognised. Wherever slaves were induced, by

proclamation, to leave their plantations, it was a manifest deviation from the usages of war; they are considered, in all general laws of nations, and in the particular ones of this country, to be moveable possessions, and unlike private vessels, captured at sea, they are not liable to confiscation. Among the ancients, prisoners of war were made slaves; but in modern times, slaves, the property of individuals, are exempted from sequestration.

A correspondence on this subject was continued, at intervals, till October 1816, when Lord Bathurst informed the American minister at London, that the British government intended to adhere to their interpretation of the treaty.

In the commercial convention, concluded with England in October 1818, the two powers agreed to refer the matter of the slaves, claimed under the treaty of Ghent, to the decision of a friendly power. The Emperor Alexander of Russia, actuated by that spirit of amity and obliging interest, he had ever manifested in all the concerns of the United States, and at that time on the best terms with Great Britain,\* consented to perform the valuable office of a mediator. Satisfied of the impossibility of coming to a satisfactory result in its negotiations with England, no other disposition of this vexatious business could have been so agreeable to this country. All the documents, relating to the matter, and the argument of the parties, having been, shortly after the convention in London, submitted to the examination of the imperial government, the opinion of the Emperor was communicated in April 1822, to Mr. Middleton, American minister, by count Nesselrode, secretary of state, directing the imperial administration of foreign affairs of Russia. The award was in these words:

“Invited by the United States of America and by Great Britain

\* See convention of St. Petersburg of July 12, 1822. This instrument is not recited in this place, as it simply contains the consent of the Emperor to become a mediator, and regulates the details of the commission. It was signed for the United States by Henry Middleton, for Great Britain by Charles Bagot and for Russia by M. M. de Nesselrode and Capodistrias.

to give an opinion, as arbitrator, in the differences, which have arisen between these two powers, on the subject of the interpretation of the first article of the treaty, which they concluded at Ghent on the 24 December 1814, the Emperor has taken cognizance of all the acts, memorials and notes, in which the respective plenipotentiaries have set forth, to his administration of foreign affairs, the arguments, upon which each of the litigant parties depends in support of the interpretation, given by it to the said article.

“Considering that the American plenipotentiary, in his note of the 4 (16th) November 1821, and the British, in his note of the 8th (20) October of the same year, have declared, that, *it is upon the construction of the text of the article, as it stands*, that the arbitrator's decision should be founded, and that both have appealed, only as subsidiary means to the general principles of the law of nations and of maritime law, the Emperor is of opinion, ‘that the question can only be decided according to the literal and grammatical sense of the first article of the treaty of Ghent’—

“Considering that the period, upon the signification of which doubts have arisen, is expressed as follows;

“All territory, &c. shall be restored without delay, and without causing any destruction or carrying away any of the artillery, or other public property *originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property*;

“Considering, that in this period, the words, *originally captured and which shall remain therein upon the exchange of the ratifications*, form an incidental phrase, which can have respect *grammatically*, only to the substantives or subjects, which precede, the emperor is of opinion,

“That the first article of the treaty of Ghent thus prohibits the contracting parties from carrying away from the places, of which it stipulates the restitution, not only the public property, *which might have been originally captured there, and which should remain therein upon the exchange of the ratifications*, but that it prohibits the carrying away from these same places, *any private property* whatever,—

“That, on the other hand, these two prohibitions are solely applicable to the places, of which the article stipulates the restitution.

“That the United States of America are entitled to a just indemnification, from Great Britain, for all private property carried

away by the British forces, and as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories.

"That the United States are entitled to consider as having been so carried away, all such slaves as may have been transported from the above mentioned territories on board of the British vessels, within the waters of the said territories, and who, for this reason, have not been restored.

"But that, if there should be any American slaves who were carried away from territories, of which the first article of the treaty of Ghent has not stipulated the restitution to the United States, the United States are not to claim an indemnification for the said slaves.

"The emperor declares, besides, that he is ready to exercise the office of mediator, which has been conferred on him beforehand by the two states, in the negotiations which must ensue between them in consequence of the award, which they have demanded.

*"Done at St. Petersburg, 22d April 1822."*

The decision of the Emperor Alexander being strictly literal and grammatical, a slight ambiguity arose concerning the extent, to which the award applied, and which the British minister, Sir Charles Bagot, (formerly in this country) lost no time in presenting to the consideration of the Imperial government. Sir Charles Bagot understood, that his government was not bound to indemnify for slaves, coming from places, never occupied by British forces, and that voluntarily joined their troops, and, as they were not carried away from places or territories captured during the war, a restitution or indemnity was not implied. Upon this point the Russian secretary of state expressed himself in the following manner :

"The Emperor, having by the mutual consent of the two plenipotentiaries given an opinion, founded solely upon the sense, which results from the text of the article in dispute, does not think himself called upon to decide here any question, relative to what the laws of war permit or forbid to the belligerents, but, always faithful to the grammatical interpretation of the 1st article of the treaty of

Ghent, his Imperial Majesty declares a second time, that it appears to him according to this interpretation :

“ That in quitting the places and territories, of which the treaty of Ghent stipulates the restitution to the United States, his Britannic Majesty’s forces had no right to carry away from these same places and territories any slave by whatever means he had fallen, or come into their power.

“ But that if, during the war, American slaves had been carried away by the English forces from other places, than those, of which the treaty of Ghent stipulates the restitution, upon the territory or on board British vessels, Great Britain should not be bound to indemnify the United States for the loss of these slaves, by whatever means they might have fallen or come into the power of her officers.”

Under this general arbitration, commissioners\* were appointed by the respective governments to ascertain the number and value of the slaves removed. But great difficulty and delay occurred in the progress of this business, principally owing to the nature of proof and the variety of claims. The commissioners also disagreed on two points, whether interest should be allowed on the claims, and whether the claims of citizens from Louisiana for slaves should be received. The British commissioner declined having recourse to the manner, prescribed in the convention for the determination of these differences on the ground, that neither of the claims were embraced by any provision of that instrument.†

\* Langdon Cheves on the part of the United States, and George Jackson on that of Great Britain.

† *Number of the Slaves and amount, conformably to the Average Value agreed upon and fixed by the Commission.*

| States.                  | Slaves. | Average value. | Amount.            |
|--------------------------|---------|----------------|--------------------|
| Maryland . . . . .       | 714     | \$280          | \$199,920          |
| Virginia . . . . .       | 1721    | 280            | 481,880            |
| South Carolina . . . . . | 10      | 390            | 3,900              |
| Georgia . . . . .        | 833     | 390            | 324,870            |
| Louisiana . . . . .      | 259     | 580            | 150,220            |
| Mississippi . . . . .    | 22      | 280            | 6,160              |
| Delaware . . . . .       | 2       | 280            | 560                |
| Alabama . . . . .        | 18      | 390            | 7,020              |
| Alexandria, D.C. . . . . | 3       | 280            | 840                |
|                          |         |                | <b>\$1,175,370</b> |

In the autumn of 1826, the British government offered to pay a round sum of 1,204,960\* dollars in full discharge of all claims, that might be presented under the Imperial decision. This was accepted, and commissioners, (Messrs. Cheves, Pleasants and Sewall) were subsequently appointed by this government to distribute the money to the different claimants ;—that laborious work is now completed.

\* "ART. 1. His Majesty the King of the United Kingdom of Great Britain and Ireland agrees to pay, and the United States of America agree to receive, for the use of the persons entitled to indemnification and compensation by virtue of the said decision and convention, the sum of twelve hundred and four thousand nine hundred and sixty dollars, current money of the United States, in lieu of, and in full and complete satisfaction for, all sums claimed or claimable from Great Britain, by any person or persons whatsoever, under the said decision and convention.

"ART. 2. Convention cancelled.

"ART. 3. The said sum of twelve hundred and four thousand nine hundred and sixty dollars shall be paid at Washington to such person or persons as shall be duly authorized, on the part of the United States, to receive the same, in two equal payments as follows :

"The payment of the first half to be made twenty days after official notification shall have been made, by the government of the United States, to his Britannic Majesty's minister in the said United States, of the ratification of the present convention by the President of the United States, by and with the advice and consent of the Senate thereof.

"And the payment of the second half to be made on the first day of August 1827.

"ART. 4. Final adjustment.

"ART. 5. Documents, &c. to be delivered up.

"ART. 6. Ratification in six months.

"Done at London, this thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-six.

"[L. s.] ALBERT GALLATIN,

"[L. s.] WILLIAM HUSKISSON,

"[L. s.] HENRY UNWIN ADDINGTON."



## SLAVE TRADE.

The foremost among Christian nations to abolish the slave trade in portions of their own country, the United States were, also, the first to adopt the most vigorous measures to suppress it on the ocean and the coasts of Africa.\* Though it has found but one faithful and sincere ally in Europe in prosecuting this business, there is no period in the history of our government, that reflects a purer or steadier lustre upon it. To accomplish a work, solely, of the most obvious justice and the holiest benevolence, has cost more blood, labour and treasure than has yet attended any reform, in which nations have been engaged; but enough has already been done to show, past a doubt, that this abominable traffic has been assailed in a vital part, though it may occupy years to burn out and eradicate a disease, so deeply seated and embedded. We do not claim for the American government a greater share of philanthropy and humanity,—a higher degree of energy and perseverance than would have actuated any other government, equally well acquainted with the magnitude of this evil. But, at least, we may say, that the Americans cannot be supposed less indifferent, than other nations, to the blessing and advantage of civil and political liberty. Nor is the obligation of entering upon this enterprise, heightened by the consideration, that they, themselves, have introduced slavery into their own country.

In closing these general remarks, we are unwilling to pass over in silence the miserable slander, that has emanated from a foreign people, in attributing to one of the nations, embarked in this great undertaking, the corrupt and wicked desire and motive of preventing the growth of foreign colonial possessions, or the imputation, equally contemptible and ill founded, that the world is indebted for all the benefits, it may receive from the humane acts of the American govern-

\* See laws of Virginia, Pennsylvania, Massachusetts, Connecticut and Rhode Island all passed before 1790, (and after they became independent States) abolishing the slave trade.

ment, to an apprehension, that the markets of the southern portion of the confederacy would be glutted with foreign importations. The best answer, that can be made to both these calumnies, will be found in a detail of the acts of the respective governments. The affairs of nations are, undoubtedly, regulated by what is understood in the general term of policy. But there are obviously different sorts of policy, and, as obviously, different modes of pursuing them. The most, in a general way, that can be expected from states, or individuals, is, that they should regard their own interest in an enlarged and liberal manner, and that statesmen, acting upon that wide and expanded view of things, their situation enables them to take, should be endowed with sufficient boldness, or foresight to abandon an immediate or temporary advantage for the distant and complete success of some vast salutary measure. It appears to us, therefore, to partake largely of the hasty and shallow construction, affixed to the term diplomacy, to brand with downright, naked selfishness, all the transactions of a government, which, in proposing some great reform, may appear to interfere with the arrangements of other nations. Without doubt, most of the beneficial changes in the state of the world have been gradually effected by the progress of civilization, but there are some, that depend on conventional law, particularly those, that relate to the rights of neutrals and belligerents. It is quite possible to imagine, that the slave trade, itself, would be annihilated in the course of time by the greater value, really belonging to white labour, or by the diffusion of better feelings and sentiments. But as the evil is, at present, an obvious, tangible one, it can be diminished, in some degree, by direct and immediate means. It is not, also, altogether just to say, that nations may not be actuated by the sentiments of a sound philanthropy, as well as by a passion for glory, or a desire to protect men of letters, or the fine arts. We cannot, certainly, expect a great developement of this feeling; and the history of the abolition of the slave trade is a deplorable proof, how much stronger the interest and prejudice of men are than their

notions of justice or humanity. But it, really, appears to be adhering too literally to some of the stale maxims, concerning human nature, to contend, that such a monstrous and apparent outrage on the rights of man should not excite, to say the least, a steady and genuine sympathy.

Since the crusades there has been no subject, upon which the Christian nations of the world could enter, so entirely divested of political antipathies, or personal considerations,—a work intended for the ultimate general good, and from which honour to each will redound in proportion to the zeal and perseverance, the parties shall individually exert,—a topic, fortunately, where the abused laws of nations are not idly quoted by the suffering, submissive neutral before the cannon's mouth of the belligerent ;—where territories and islands are not sliced and carved for the benefit of the strongest hand,—“Guadaloupe” exchanged for “Pondicherry,” and all the continent of Europe gracefully marked out into new and well proportioned compartments by the blue, pink and yellow lines of the diplomatic limner. All nations, being substantially disinterested, can fairly judge of the conduct of each other, and it cannot but be gratifying, that, thus far, the proceedings of this country have received the applause of a government, best able in Europe to form a true judgment, and whose praise is, therefore, the most valuable.

This question of slavery will exercise a great influence over the history of the present century. There is no single subject possessing such deep interest, that seems so entirely opposed to the spirit of the times, or that, in some respects, is so completely beyond the usual remedies, that may be applied by government to evils, undoubtedly existing and well defined. There is no process of legislation, that can reach domestic slavery. Though but one opinion exists among all classes of men on this subject, still, it is by no means a speculative one ; and we cannot, without extreme danger, apply to it the abstract principles of humanity and philanthropy. No one vindicates slavery ;—it is immaterial, whether slavery has existed from the foundation of the world, whether the

refined, or the moral, or the most humane people have held slaves, whether it has been approved by the sacred writers, or eminent profane ones, it is now, for all practical purposes of life, admitted to be a great evil, that is to say, the objects, for which men are employed as slaves, could, with trifling exceptions, be accomplished in a better and cheaper way. The influence of this system upon the character and condition of political institutions is one of the most curious questions, that can arise. We well understand, what was its effect in antiquity, but there is no point of comparison between the modes of slavery and the forms of government of the two ages. And it is perfectly evident that any slight approach, among modern slaves, to the condition and character of the ancient, particularly of the Roman, would lead immediately to the most dreadful consequences.

The provision in the constitution assigning to the year 1808, the period when the importation of slaves should cease, was a just and necessary sacrifice to the habits and state of population of the country. But Congress were not discouraged by this stipulation from applying its authority to every description of the trade within its reach. Five years after the organization of the federal government a law was passed, declaring that,

“No citizen or citizens of the United States, or foreigner, or any other person coming into, or residing within the same, shall, for himself or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare, any ship or vessel, within any port or place of the United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves to any foreign country, or for the purpose of procuring from any foreign kingdom, place, or country, the inhabitants of such kingdom, place, or country, to be transported to any foreign country, port, or place, whatever, to be sold or disposed of as slaves, under the penalty of the forfeiture of any such vessel, and of the payment of large sums of money, by the persons offending against the directions of the act.”

We trace the same resolute, devoted and solicitous spirit

through the successive acts of April 1798, May 1800, February 1803, March 1807, April 1808, March 1819, till we arrive at the celebrated law of May 1820, which has received from England the just and great praise of being the most vigorous measure, yet devised for the entire suppression of this traffic. This statute enacts that,

“ If any citizen of the United States, being of the crew or ship’s company of any foreign ship or vessel, engaged in the slave trade, or any person, whatever, being of the crew or ship’s company of any ship or vessel, owned in the whole, or in part, or navigated for or in behalf of any citizen, or citizens of the United States, shall land from any such ship, or vessel, and on foreign shore seize any negro, or mulatto, not held to service or labour by the laws of either of the states or territories of the United States, with intent to make such negro or mulatto a slave, or shall decoy, or forcibly bring, or carry, or shall receive such negro, or mulatto on board any such ship, or vessel with intent, as aforesaid, such citizen, or person shall be adjudged a *pirate*, and, on conviction, *shall suffer death*.”

Thus far the American government had confined its attention to municipal regulations;—forbidden by the quiet, solitary course of its policy to mingle, at all, in the enticing politics and hazardous movements of Europe. And it will readily be believed, that the proposition to take a part with the sovereigns of Europe in the suppression of the slave trade did not originate here, though the conduct of the United States could have left no doubt of its own wishes, perhaps, even of its intentions. But it was submitted for the consideration of the government by a power, that has stood forward in a conspicuous way in this honourable business. The propriety, nay, the necessity of seeking the aid and co-operation of the United States can be best made known by giving a brief account of the transactions of the principal European nations, relative to this matter.

Immediately after the abolition of the slave trade in England in 1806, it was perceived, that the effects would be nominal, unless the consent of other nations was obtained. Lord Eldon, Lord Liverpool, Mr. Rose, and other statesmen, who could

not be supposed to be influenced by any interested motives whatever, opposed in parliament the various bills, connected with this subject, on the ground, that England would be deprived of all the commercial benefits of the traffic, and that not a slave the less would be carried from the coast of Africa. And in consequence of the facilities of smuggling from the situation of the West India islands and the coasts adjoining, the English colonies in those seas would continue to obtain the same supplies, though at a higher rate. This is, undoubtedly, a sound argument, and, in the ordinary transactions of government, would probably have been decisive; but other considerations, besides those of immediate commercial advantage, attend the slave trade. Parliament, having at length in 1806, resolved that this traffic was "contrary to the principles of justice, policy and humanity," the friends of abolition, without delay, occupied themselves with the most efficacious steps towards accomplishing the entire extirpation of the trade. Accordingly in June 1806, Mr. Wilberforce moved the following resolution in the House of Commons, which was carried in the affirmative :

"That an humble address be presented to his majesty, beseeching his majesty to take such measures, as in his wisdom he shall judge proper, for establishing, by negotiation with foreign powers, a concert and agreement for abolishing the African slave trade, and for affording assistance, mutually, towards carrying into execution any regulations, which may be adopted by any or all of the contracting parties for accomplishing their common purpose; assuring his majesty, that this house, feeling the justice and honour of the British nation to be deeply and peculiarly involved in the great object, they have in view, will be ready at all times, cheerfully to concur in giving effect to such measures, as his majesty may see fit to adopt for its attainment."

The only trace, we have been able to discover, of applications to foreign governments was in the case of France in June of the same year. Lord Yarmouth was directed to ask the cooperation of that country in a work, so honourable to both governments and so interesting to humanity. But the

war was soon after renewed, in which the different powers of Europe became necessarily involved, reaching, at last, in its destructive progress the remote shores of this country. We are not, therefore, aware, that any attention was paid to the slave trade, before the Congress of Vienna in 1814, though the House of Commons, on the proposition of Mr. Brougham, passed in 1810, a resolution embracing the same objects as that of Mr. Wilberforce.

Passing by the intermediate arrangements, made with Sweden, France and the Low Countries in 1813, 1814, a proposition was submitted in 1815 by Lord Castlereagh to the Congress at Vienna, that the eight powers there assembled, should declare their adhesion to the general principle of abolition, that they should examine the possibility of an immediate, or of a definitive, gradual and entire abolition, or the means of obtaining an immediate partial abolition. These propositions were amply discussed, but they met with a cold reception from France, Spain and Portugal. The only result of the different deliberations appears to have been the celebrated declaration of the eight powers of the 8th February 1815.

“The plenipotentiaries of the powers, who signed the treaty of Paris the 30th May 1814, assembled in Congress, having taken into consideration, that the traffic, known under the name of the African slave trade, has been regarded by just and enlightened men of all ages, as repugnant to the principles of humanity and of universal morality, that the particular circumstances, to which this traffic owes its origin, and the difficulty of abruptly interrupting its progress, have, to a certain degree, lessened the odium of continuing it, but that, at last, the public voice in all civilized countries has demanded, that it should be suppressed, as soon as possible : that since the character and the details of this traffic have been better known, and the evils of every sort, which accompanied it, completely unveiled, several European governments have resolved to suppress it ; and that successively all powers, possessing colonies in different parts of the world, have acknowledged, either by legislative acts, or by treaties and other formal engagements, the obligation and necessity of abolishing it : that by a separate article

of the last treaty of Paris, Great Britain and France engaged to unite their efforts at the Congress of Vienna to induce all the powers of Christendom to pronounce the universal and definitive abolition of the slave trade; that the plenipotentiaries, assembled at this Congress, cannot better honour their mission, fulfil their duty, and manifest the principles, which guide their august sovereigns, than by labouring to realize this engagement, and by proclaiming, in the name of their sovereigns, their desire to put an end to a scourge, which has so long *desolated Africa, degraded Europe, and afflicted humanity*; the said plenipotentiaries have agreed to open their deliberations as to the means of accomplishing so salutary an object, by a solemn declaration of the principles, which have guided them in this work.

“Fully authorized to such an act, by the unanimous adherence of their respective courts to the principle, announced in the said separate article of the treaty of Paris, they, in consequence, declare in the face of Europe, that, looking upon the universal abolition of the slave trade, as a measure, particularly worthy of their attention, conformable to the spirit of the age, and to the generous principles of their august sovereigns, they are animated with a sincere desire to concur, by every means in their power, in the most prompt and effectual execution of this measure, and to act in the employment of those means with all the zeal and all the perseverance, which so great and good a cause merits.

“Too well informed of the sentiments of their sovereigns, not to foresee, that, however honourable may be their object, they would not pursue it without a just regard to the interests, the habits, and even the prejudices of their subjects; the said plenipotentiaries, at the same time, acknowledge that this general declaration should not prejudice the period, which each particular power should look upon as the most expedient for the definitive abolition of the traffic in slaves. Consequently, the determination of the period, when this traffic ought universally to cease, will be an object of negotiation between the different powers, it being, however, well understood, that no means, proper to ensure and accelerate its progress, should be neglected;—and that the reciprocal engagement contracted by the present declaration between the sovereigns, who have taken part in it, should not be considered as fulfilled, until the moment, when complete success shall have crowned their united efforts.



"In making this declaration known to Europe and to all the civilized nations of the earth, the said plenipotentiaries flatter themselves, they shall engage all other governments and particularly those, who, in abolishing the traffic in slaves, have already manifested the same sentiments, to support them with their suffrages in a cause, of which the final triumph will be one of the greatest monuments of the age, which undertook it, and which shall have gloriously carried it into complete effect.\*

The efforts, directed to the suppression of the slave trade, have not been attended with entire success. But a nominal abolition has been obtained, in the course of the last seventeen years, from every power of Europe with the exception of the Portuguese, whose trade is now restricted to the south of the Equator. At the same time, the evil is so deeply rooted in the habits of the people of Africa, the prospect of gain has, unfortunately, become so alluring (obviously increasing as the trade is curtailed) so deplorably hopeless is often the struggle of reason, justice, humanity or any other honourable feeling or sentiment against the wicked, corrupt passions, or even the honest prejudices of some men, that for the complete extirpation of this traffic one thing ap-

\* The same powers made a declaration on the 28th November 1822, at Verona, of a similar import. These two state papers can be considered little else than an evasion of the whole subject.

Great Britain renewed these discussions at Aix la Chapelle and London, besides undertaking separate negotiations at the respective courts, but the success was only partial. After the American and British flags had disappeared from the coasts, nearly the same amount of traffic appeared to be carried on successively under the Spanish, Portuguese and French. The trade was little diminished, other papers being substituted.

In 1810 from 70 to 80,000 slaves were transported from Africa principally under the Portuguese flag. But in 1822 a principal part of the trade was carried on under the French; it was abolished by that government, but under such slight penalties as to make the insurance against all risks 20 per cent., while the profits often exceeded 150. Nantz appeared to be the principal port for fitting out these vessels.\*

\* See petition of French bankers—Speech of Duke de Broglie in French House of Peers, &c.

pears indispensable, and that is, a different course of trade and greater civilization along the coasts of Africa itself. We are well aware, that England contends with zeal for a limited right of search, applied to vessels within certain latitudes, and she has already made treaties with Spain, Portugal and the Netherlands, in which this right is mutually conceded and conferred. The friends of the abolition also, consider it of great importance, that vessels should be allowed to be seized for other proof than the actual fact of having slaves on board. These stipulations, perhaps, would be highly salutary, but serious obstacles exist to their adoption by this country. In making an enumeration of the difficulties, still existing, the stoutest heart,—the most resolute friend of abolition may feel oppressed with doubts, nay, with despair. But, on examination, it will be found, that little more is now wanted than patience and perseverance. The remark of the British plenipotentiary at Aix la Chapelle is very just,—“that it has been the fate of this question in every stage of its progress, to have difficulties represented as insurmountable, which, in a little time, have yielded to the perseverance and to the matured impulses of humanity.” And not only has the general scheme of an abolition been certainly fulfilled, with a very slight exception already mentioned, but the three final objects, so important in the opinion of some of the European governments for the perfect execution of the plan, have been partially accomplished. A refusal on the part of this government, to comply with one of these requisitions, prevented the ratification of a convention, by which the United States would have taken an active and, undoubtedly, a leading part in the enterprise.

In 1818 the cooperation of this Republic was solicited. Soon after the conference of the five powers in London, (Prussia, England, France, Austria, Russia) a proposition was made to the American minister, Mr. Rush, by Lord Castlereagh in a letter, dated June 20, 1818, from which we shall make several extracts.

“The distinguished share, which the government of the United States has, from the earliest period, borne in advancing the cause

of the abolition of the slave trade, makes the British government desirous of submitting to their favourable consideration whatever may appear to them calculated to bring about the final accomplishment of this great work of humanity."———"From May 1820, there will not be a flag, which *can legally* cover this detested traffic to the north of the line, and there is reason to hope, that the Portuguese may ere long be, also, prepared to abandon it to the south of the equator; but so long as some effectual concert is not established amongst the principal maritime powers for preventing their respective flags from being made a cover for any illicit slave trade, there is but too much reason to fear, whatever may be the state of the law on this subject, that the evil will continue to exist, and, in proportion as it assumes a contraband form, that it will be carried on under the most aggravated circumstances of cruelty and desolation. It is from a deep conviction of this truth, founded upon experience, that the British government, in all its late negotiations upon this subject, has endeavoured to combine a system of alliance for the suppression of this most abusive practice, with the engagements, which it has succeeded in contracting with the governments of Spain and Portugal, for the total or partial abolition of the slave trade. I have now the honour to enclose to you copies of the treaties, which have been happily concluded with those powers, together with the acts, which have recently passed the Legislature for carrying the same into execution."———"What I have earnestly to beg of you is, to bring them under the consideration of the President, intimating to him the earnest wish of the British government, that the exertions of the two States may be combined, under a somewhat similar principle, to put down this great moral disobedience, wherever it may be committed, to the laws of both countries. I am confident, this cannot effectually be done, except by mutually conceding to each other's ships of war a qualified right of search, with a power of detaining the vessels of either State with slaves actually on board. You will perceive in these conventions a studious and, I trust, a successful attempt to narrow and limit this power within due bounds, and to guard it against perversion.

Mr. Rush, in the absence of all instructions on the subject, informed Lord Castlereagh that he should, by the earliest opportunities, transmit to his government copies of his

lordship's letter, and the documents accompanying it. And towards the close of the same year the American minister made a definitive reply to the British Secretary of State. He observes,

"On examining the provisions of the treaties, which your lordship honoured the undersigned by communicating, it has appeared to the President, that their essential articles are of a character, not adapted to the circumstances, or to the institutions of the United States.

"The power, agreed to be given to the ships of war of either party to search, capture and carry into port for adjudication the merchant vessels of the other, however qualified, is connected with the establishment of two mixed courts, one of which is to have its seat in the colonial possessions of the party respectively. The institution of such tribunals is, necessarily, regarded as fundamental to the whole arrangement, whilst their peculiar structure is doubtless intended, and would seem to be indispensable towards imparting to it a just reciprocity. But to this part of the system the United States, having no colonies on the coast of Africa, in the West Indies, or elsewhere, cannot give effect.

"Moreover, the powers of government in the United States, whilst they can only be exercised within the grants, are, also, subject to the restrictions of the federal constitution. By the latter instrument all judicial power is to be vested in a Supreme Court, and in such other inferior courts as Congress may, from time to time, ordain and establish. It further provides, that the judges of these courts shall hold their offices during good behaviour, and be removable on impeachment and conviction of crimes and misdemeanors. There are serious doubts, whether, obeying the spirit of these injunctions, the government of the United States would be competent to appear as party to the institution of a court, for carrying into execution their penal statutes, in places out of their own territory: a court, consisting partly of foreign judges, not liable to impeachment under the authority of the United States, and deciding upon their statutes without appeal."—"These are some of the principal reasons, which arrest the assent of the President to the very frank and friendly overture, contained in your lordship's communication. Having their foundation in constitutional impedi-

ments, the government of his Britannic Majesty will know how to appreciate their force."

These difficulties being fatal, there was a pause in foreign negotiations, but the municipal regulations of the government continued with a spirit and vigour, equally honourable and unabated. The acts of March 3, 1819, and of May 15, 1820, already quoted, in declaring the slave trade piracy, authorized the President to employ such portions of the naval force of the country, as he might think proper for its suppression. In the three following years the House of Representatives adopted with a vote, nearly unanimous, a resolution requesting "the President to enter into such arrangements, as he may deem suitable and proper, with one or more of the maritime powers of Europe, for the effectual abolition of the slave trade." This resolution was the foundation of our subsequent negotiations with England, and though, under its authority, instructions were sent from the Department of State to the ministers at the courts of all the maritime powers, no material or decisive results followed from the measure. We cannot but rejoice, that this attempt on the part of the government to enter formally into the general policy of Europe was on an occasion so honourable to the nation. The question, indeed, can hardly be called an European one. We, perhaps, feel a deeper interest in it, than any other people, since the independence of South America and the suppression of the slave trade, and gradual emancipation of slaves, in the greater part of that continent. Comparatively, Europe can be but little affected in its commercial interests by the continuance of the traffic.

Early in 1823, Mr. Stratford Canning, the English minister in this country, renewed the subject of a convention with much earnestness, and called upon the government to accede, either to the terms proposed originally by Lord Castlereagh, or to present for consideration some scheme or plan that should serve as a substitute. For the right understanding of the British proposition, we cannot do better, than recite at large a memorandum, delivered by Lord Castlereagh to the Duke of Richelieu at Aix la Chapelle in 1818 :

“ First—*As to right of visit.*

“ No one of the three conventions, signed by Great Britain with Spain, Portugal and Holland, gives this right to king's ships indiscriminately. In all, it is confined to king's ships, having the *express instructions and authority* as specified in the treaty.

“ The provision is, in all cases, reciprocal ; but the treaty with the Netherlands restricts the exercise of this right to a specified number of ships of each power, not exceeding twelve in the whole. Each power, as soon as it grants these instructions to any of its ships of war, is bound to notify to the other the name of the vessel, so authorized to visit.

“ Second—*Right of detention.*

“ No visit or detention to take place, except by a commissioned officer, having the instructions above referred to, as his special authority for the same : nor can he detain and carry into port any vessel, so visited, except on the single and simple fact of *slaves found on board*. There is a saving clause to distinguish domestic slaves, acting as servants or sailors, from those strictly appertaining to the traffic.

“ Third—*Adjudication.*

“ The visiting officer, finding slaves on board, as he conceives, contrary to law, may carry the vessel into whichever of the two ports is the nearest, when the mixed commission, belonging to the capturing and captured vessels, shall reside ; but by doing so, he not only renders himself personally responsible to his own government for the discretion of the act, but he, also, makes his government answerable to the government of the state, to whom the vessel so detained belongs, for the full compensation, in pecuniary damage, which the mixed commission may award to the owners for the detention, if unjustifiably made.

“ The mixed commission has no jurisdiction of a criminal character, and, consequently, can neither detain, nor punish the persons, found on board ships so detained, for any offences they may, by such slave trading, have committed against the laws of their particular state. The mixed commission has no other authority than summarily to decide, whether the ship has been properly detained, or not, for having slaves illicitly on board. If this is decided in the affirmative, the ship and cargo (if any on board) are forfeited, the proceeds to be equally divided between the *two states*,

the slaves to be provided for by the state, in whose territory the condemnation takes place.

"If the mixed commission orders the vessel to be released, at the same moment to award such pecuniary compensation to the owners for the detention, as appears to them reasonable.

"The mixed commission is composed of a commissary judge and a commissary arbitrator of each nation, as was provided in the convention signed by Great Britain and France in 1815 for adjudicating their private claims.

"Fourth—*The sphere of operation.*

"In the Spanish and Portuguese conventions there is no other restriction as to the limits, within which detention, as above, may take place, than what arose naturally out of the state of the laws, viz., that so long as either powers may lawfully trade in slaves to the south of the equator, no detention should take place within those limits.

"In the convention with Holland a line is drawn from the Straits of Gibraltar to a point of the United States, so as to except out of the operation, what may be called the European seas.

"In all these conventions the whole range of voyage, from the coast of Africa to the opposite shores of both Americas, including the West Indies, is subjected to the regulated *surveillance*, thus established."

The objection of this government to the stipulation, we have just recited, was simple, direct and intelligible. They considered the right of search at sea as a right of war exclusively, and analogous to the act of searching dwelling houses on land. It is confined to the single act of finding and taking contraband of war, the belligerent possessing the right of preventing a third party from furnishing to his enemy the means, or materials of war.

"Among the modern maritime nations, an *usage* has crept in, not founded upon the law of nature, never universally admitted, often successfully resisted, and against which all have occasionally borne testimony, by renouncing it in treaties, of extending this practice of search and seizure to *all* the property of the enemy in the vessel of the friend. This practice was, in its origin, evidently an abusive and wrongful extension of the search for contraband, effected

by the belligerent, because he was armed; submitted to by the neutral, because he was defenceless, and acquiesced in by his sovereign for the sake of preserving a remnant of peace, rather than become, himself, a party to the war. Having thus occasionally been practised by all, as belligerents, and submitted to by all, as neutrals, it has acquired the force of an usage, which, at the occurrence of every war, the belligerent may enforce or relinquish, and which the neutral may suffer or resist at their respective discretions."

The American government opposed the extension of this right by treaty; to abridge the freedom of the seas by solemn compacts constituted, in their judgment, a precedent, from which no beneficial results could flow. And if the purpose, on the present occasion, was a new one, neither was the example or the change less dangerous on that account. The right of search should be curtailed, even, in time of war; for the modern modifications of the principle can be regarded in no other light than as a usurpation on neutral rights. This principle, so liable to abuse during hostilities, adopted in peace, may, finally, establish a new dominion of the sea, and like the progress and exercise of all unjust authority, gradually confound every distinction of times, purposes and circumstances of war and peace, and of the rights, inseparable from these conditions of society.

The dangers, developed in the above paragraph, result, as it appears to us, from a practical view of the subject, and, by no means, from an apprehension, that government could manifest a supineness in guarding their most precious rights. The proposition involves a mutual qualified, or modified right of search for a special purpose on certain designated coasts, established by a solemn compact, made in time of peace. An abuse of the right, it would seem, could not be practised or long continue, but from the ignorance or indifference of government. In the terms of the agreement the distrust of the parties of each other is made apparent. We admit this qualified, mutual exercise of authority for the suppression of an iniquitous, immoral, inhuman traffic, that has too long remained a disgrace and pollution. And ever utterly disclaiming and fully denouncing the outrageous extent, to



which the exercise of it has been forcibly pushed in time of war, we agree to the partial application of it for a specific purpose in time of peace. It is not easy to see in what way such a compact can be drawn into a pernicious usage or example. Infractions of the least important conventions are, in most cases, speedily detected and, where the means exist, as speedily resented. If this description of authority can be usefully employed, why deprive the world of the benefit of it? Why hesitate to resort to it, because, during late wars the neutral was grievously oppressed? When an analogy of times or circumstances can be shown, it is well to be upon our guard and receive with extreme jealousy similar propositions; but it is neither judicious nor prudent to abandon a positive, obvious benefit for evils, that, to say the least, are not only extremely remote, but equally doubtful. This provision is not introduced, as transferring a right and practice of war to a condition, or purpose of peace, but it is a mode (of which all admit readily the efficiency) that has been proposed for the suppression of the slave trade. This application of the right of search appears to have no more analogy to the belligerent claim and practice than the employment of an armed force on the coast of Africa and the same armed force, directed to the objects and purposes of war. There is, in both cases, a right of search exercised, and an armed force employed, but the origin of the right, the reason of the authority and the principles, upon which they proceed, differ as widely as possible. We have seen, that a proposition has been made to the Congress of Vienna for the extermination of the piratical governments on the Barbary coast. Here would be a reason for putting into operation certain belligerent rights. The remote neutral accedes to the terms of the convention, and suffers, for the time being, all mischief, arising from the right of blockade, or of search, or any other belligerent prerogative, as established by the most approved laws of nations. If it is just, necessary and expedient to exterminate the Barbary pirates, there is no possible objection to the employing, for that purpose, all the means, that the established laws of war justify.

In regard to the slave trade, we are presented with a specific form of exterminating another and a worse description of pirates. No objection is made to the efficiency, but to the principle of the scheme. To accomplish this object, force, it is admitted, must be used, and we see, in principle, no real difference, as to the manner of applying this force, though there is a vast difference in the results. Both the reports of the House of Representatives of 1821 and 22 recommend distinctly a qualified right of search. They were never acted on. A similar interpretation undoubtedly belongs to that of the following year. For this opinion, separate from the obvious meaning of the document itself, easily to be ascertained by carefully tracing its parliamentary history, we have the authority of a committee of the House of Representatives of 1825. In closing this paragraph, it is necessary to observe, that the right of search, contended for, delegated that authority only to a specific number of cruisers of each power, exercised under specific limitations, and farther, proposed to place the vessels, detained, in the hands of tribunals of their own country for trial.

We have presented the argument in favour of the British proposition somewhat at length, though we think that nothing, which can be said on this important subject, can outweigh the objections to yielding the right of search under any circumstances whatever. Practically speaking, the right of search would affect the British more than us, for their commerce in those seas, where this right would be exercised, is undoubtedly greater. It is, also, matter of satisfaction to observe, not only for this occasion but all others, that the British, themselves, regard the right of search as altogether belligerent. We possess a decision of the high court of admiralty entirely conclusive on this subject;—we shall give a single extract from it.

“I can find no right,” says sir William Scott, “that gives the right of interruption to the navigation of states in amity upon the high seas, excepting that, which the rights of war give to both belligerents against neutrals; no nation can exercise a right of visitation and search upon the common and unappropriated parts of the sea save only on the belligerent claim.”

Upon the authority of the resolution of the House of Representatives, already quoted, instructions were sent by the Executive, in the summer of 1823, to the minister in London to propose a convention (of which a draught was enclosed) for the suppression of the African slave trade, under the denomination of piracy, on condition that England, by legislative enactment, should, on its part, visit that traffic with similar pains and penalties. The British government promptly complied with the terms of the proposed arrangement, and passed an act in accordance with the agreement. Mr. Rush, after a few brief conferences, agreed with the commissioners (appointed to treat on the affairs of this country) upon a convention,\* varying in some details from the draught commu-

\* A convention for the suppression of piracy committed by the African Slave Trade.

"ART. 1. The two high contracting powers having each separately by its own laws, subjected their subjects and citizens who may be convicted of carrying on the illicit traffic in slaves on the coast of Africa to the penalties of piracy, do hereby agree to use their influence respectively, with the other maritime and civilized nations of the world to the end that the said African slave trade may be recognised and declared to be piracy under the law of nations.

"ART. 2. It is agreed by the two high contracting parties, that the commanders and commissioned officers of either nation, duly authorized under the regulations and instructions of their respective governments to cruise on the coasts of Africa, of America, or of the West Indies for the suppression of the slave trade, shall be authorized, under the conditions, limitations and restrictions hereinafter mentioned, to capture and deliver over to the duly authorized and commissioned officers of the other *any ship, or vessel, carrying on such illicit traffic in slaves under the flag of the said other nation, or for the account of their subjects, or citizens, to be sent in for trial and adjudication by the tribunals of the country, to which such slave ship, or vessel shall belong.* And the said commanders and commissioned officers shall be further authorized to carry, or send in any such slave trading ship, so by them captured, into the ports of the country, to which such slave trading ship shall belong, for trial by the tribunals and conformably to the laws of the said country. But the slave ship, so captured, shall not be sent into the ports, or tried by the tribunals of the captor.

"ART. 3. If any naval commander, or commissioned officer of the

nicated by the American Secretary of State. In speaking in parliament of this instrument (at that time ratified by the British government) Mr. Canning observed,

United States of America, shall, on the high seas, or any where without the territorial jurisdiction of the said states, board, or cause to be boarded any merchant vessel of Great Britain, and visit the same as a slave trader, or on suspicion of her being engaged in carrying on an illicit traffic in slaves, in every case, whether the said visited vessel shall be captured and delivered over, or sent into the ports of her own country for trial and adjudication, or not, the boarding officer shall deliver to the master, or commander of the visited vessel, a certificate in writing, signed by the said boarding officer with his name, and the addition of his rank in the service of the United States, and the name of the public vessel of the United States, and of her commander, by whose order the said visit shall have been ordered, and the said certificate shall declare that the only object of the said visit is to ascertain, whether the said British merchant vessel is engaged in the slave trade, or not, and, if found to be so engaged, to take and deliver her over to the officers, or the tribunals of her own nation for trial and adjudication. And the commander of the said public vessel of the United States shall, when he delivers her over to the officers or tribunals of Great Britain, deliver all the papers, found on board the captured vessel, indicating her national character and the objects of her voyage; and with them a like certificate of visitation in writing, signed by his name with the addition of his rank in the navy of the United States, and the name of the public vessel, commanded by him, together with the name and rank of the boarding officer, by whom the said visit was made. This certificate, shall, also, specify all the papers, received from the master of the vessel, detained or visited, or found on board the vessel, and shall contain an authentic declaration, exhibiting the state, in which he found the vessel detained, and the changes, if any, which have taken place in it, and the number of slaves, if any, found on board at the moment of her detention. And the same duties herein described shall devolve upon every commander or commissioned officer of the royal navy of Great Britain, by whom, or by whose order any merchant vessel of the United States, or navigating under their flag, shall be visited for the said purposes, and upon the boarding officer, by whom the visit shall be effected, on the high seas or any where without the territorial jurisdiction of Great Britain.

“ART. 4. No merchant vessel of either of the contracting parties under the convoy of a public vessel of her own nation shall, under any

"It was a most gratifying circumstance, that the two greatest maritime nations in the world should so far compromise their mari-

circumstances whatever, be captured or visited by, or from any public vessel of the other nation, as being engaged, or on suspicion of being engaged in the slave trade.

"ART. 5. No search shall be made by, or under the orders of the commander, or boarding officer of any public vessel of either party, visiting any merchant vessel of the other, as being engaged, or under suspicion of being engaged in the slave trade, excepting such as may be necessary to ascertain, if there be slaves on board for the purposes of the said traffic, or other proof, that the said vessel is so engaged. No person shall be taken out of the said vessel, or captured merchant vessel of either nation, by the commanding officer of the visiting vessel, or under his order—nor shall any part of the cargo of the said visited vessel be removed out of her, until delivered over to the officers, or tribunals of her own nation.

"ART. 6. When a merchant vessel of either nation shall be captured, as being engaged in the slave trade, by any commander or commissioned officer of the navy of the other nation, it shall be the duty of the commander of any public ship of the navy of the nation, to which the captured vessel shall belong, upon the offer thereof being made to him by the commander of the capturing vessel, to receive into his custody the vessel so captured, and to carry and to send the same into the ports of his own country for trial and adjudication, and at the time of the delivery of the said vessel, an authentic declaration shall be drawn up in triplicates, signed by both the commanders of the delivering and of the receiving vessels, one copy of which shall be kept by each of them, stating the circumstances of the delivery, the number of slaves, if any, on board of her, a list of all the papers, received or found on board of her at the time of capture, and delivered over with her, and the names of the master or commander of the captured vessel, and of every person on board of her, other than the slaves, at the said time of delivery, and the third copy of the said declaration shall be transmitted with the said captured vessel, and the papers found on board of her, to one of the ports of the country, to which the said captured vessel shall belong, to be produced before the tribunal, appointed or authorized to decide upon the said capture, and the commander of the said capturing vessel shall be authorized to send the boarding officer and one or two of his crew with the said captured vessel to appear as witnesses of the facts in relation to her capture and detention before the said tribunal. The reasonable expenses of which witnesses in proceeding to the place of trial, during their necessary detention

time pride, as to act together for the accomplishment of such a purpose, especially as the realization of this arrangement would

there, and for their return to their own country, or to rejoin their station in its service, shall be allowed by the tribunal of trial; and in case of the condemnation of the captured vessel, be defrayed from the proceeds of the sale thereof, and in case of the acquittal of the said vessel, they shall be paid by the government of the capturing officer.

"ART. 7. The commander, or commissioned officer of the navy of either of the contracting parties, having captured a merchant vessel of the other, as being engaged in the slave trade, if there be no public vessel of the nation, to which the said captured vessel belongs, cruising upon the same station, to the commander of whom the said captured vessel may be delivered over, as stipulated in the preceding article, shall carry or send the said captured vessel to some convenient port of their own country, there to be delivered up to the competent tribunal for trial and adjudication. And the said captured vessel shall there be libelled in the name and behalf of the captors, and in case of the condemnation of the said vessel, the proceeds of the sale thereof and of her cargo, if also condemned, shall be paid to the commander of the said capturing vessel for the benefit of the captors to be distributed, according to the established rules of the service of the nation, to which such capturing vessel shall belong, for the distribution of prize money.

"ART. 8. The captain, or commander and crew of the said vessel, so captured, and sent in for trial and adjudication, shall be proceeded against conformably to the laws of the country, whereunto they shall be so brought, upon the charge of piracy, by being engaged in the African slave trade, and the captain or commander, the boarding officer, or other persons, belonging to the capturing vessel, shall be competent witnesses to the facts, relating to the said charge and to the capture of the said vessel, to which they may be personally knowing: But every such witness upon the criminal trial for piracy shall be liable to be challenged by the person accused, and set aside as incompetent, unless he shall release and renounce all his individual claim to any part of the prize money, upon the condemnation of the vessel and cargo.

"ART. 9. It is agreed between the high contracting parties, that the right of visiting, capturing and delivering over for trial the vessels, engaged in the African slave trade, and assuming their respective flags, is mutually conceded to the officers of their respective navies, on the consideration, that they have by their respective laws declared

probably not be the termination of its benefits. It would be felt in all future discussions of the slave trade, that the united remon-

their citizens and subjects, actively participating in the said traffic, guilty of the crime of piracy.

"That no part of this convention shall be so construed as to authorize the detention, search, or visitation of the merchant vessels of either nation by the public officers of the navy of the other, except vessels engaged in the African slave trade, or for any other purpose whatever, than that of seizing and delivering up the persons and vessels concerned in that traffic, for trial and adjudication by the tribunals and laws of their own country.

"ART. 10. It is further agreed, that this right of visiting, detaining and delivering over for trial, vessels, engaged in the slave trade, shall be exercised only by the commissioned officers of the navy of the parties respectively furnished with instructions from their respective governments, for the execution of their respective laws for the suppression of the slave trade. That the boarding officer and the captain, or commander of the vessel, exercising these rights, or either of them, shall be responsible in damages and costs to the master and owners of every merchant vessel, so by them delivered over, detained, or visited, for every vexatious, or abusive exercise of the right. In the case of every vessel delivered over, as herein stipulated for trial, the tribunal shall be competent to receive the complaint of the master, owner, or owners, or of any person on board of such captured vessel, or interested in the property of the cargo at the time of her detention, and on suitable proof of such vexatious, or abusive detention, or visitation, to award reasonable damages and costs to the sufferers, to be paid by the said commanding, or boarding officer, or either of them, so charged with vexatious, or abusive detention, or visit. And the high contracting parties agree, that their respective governments shall, in every such case, cause payment to be made of all such damages and costs, so awarded to the persons, so entitled to receive them, within twelve months from the date of such award. And if any case of such vexatious, or abusive detention or visit shall occur, in which the vessel detained, or visited shall not be delivered over for trial and adjudication, as herein provided, the commander and boarding officer, by whom such vexatious and abusive detention, or visit, shall have been made, shall also be responsible in costs and damages to the sufferers upon complaint before the competent Admiralty court of the country of the said commander and boarding officer. And the respective governments shall, in like manner, cause payment to be made of any damages and costs, awarded by said court, within twelve months from the date of the award.

stances of such powers would receive no small force in bringing others to a common understanding with them, in support of a virtuous and beneficent confederacy for the universal abolition of the slave trade. Honourable gentlemen who recollect how anxiously questions of maritime law have, at all times, been contested between us and the United States, will readily suppose, that some points of dignity have been reserved on both sides, and certain boundaries of maritime law left unbroken; but upon the point of the slave trade, —the powers are defined, ample and effectual. We have each reserved to ourselves the right of administering our own laws, though the right of capture belongs to both."

We beg the reader to examine the second and fourth sections of the convention, printed in the note;—a qualified right of search is there effectually admitted and recognised, introduced, it is true, under the form and appellation of piracy, but this appears only, a verbal distinction. The meaning of

"ART. 11. A copy of this convention and of the laws of the two countries, actually in force for the prohibition and suppression of the African slave trade, shall be furnished to every commander of the public vessels, instructed to carry into effect such prohibition. And in case any such commanding officer of the navy of the United States, or of Great Britain shall deviate, in any respect, from the dispositions of this treaty, and from the instructions of his government, conformable to it, the government, which shall conceive itself to be wronged by such conduct, shall be entitled to demand reparation, and, in such case, the government of the nation, to the service of which he may belong, binds himself to cause inquiry to be made into the subject of the complaint, and to inflict upon him, if he be found to deserve it, a punishment proportioned to the transgression, which may have been committed.

"ART. 12. The present treaty, consisting of ——— articles, shall be ratified, and the ratifications exchanged within one year from this date, and sooner if possible.

"In witness whereof, the respective plenipotentiaries have signed the same, and thereunto affixed their seals.

"Done at ——— the ——— day of ——— in the year of our Lord ———."

(Though this convention was never ratified by the U. States, it is too important, and of a character too uncommon, to have been omitted.)



the instrument simply is, the slave trade shall be suppressed, not as slave trade, but as piracy, and, as piracy, the parties agree to apply to it, in time of peace, a well known belligerent right. The only effect of this convention was to compel the parties to take one more step, in order to introduce the right of search. It is competent to governments to declare any traffic piracy, and, under that denomination, resort to the belligerent right. It is, therefore, as easy to make a convention immediately applying the right of search, as one first declaring the slave trade piracy. The practical effects of the two instruments would be the same—the same liability to abuse,—the same pernicious consequences in the way of precedent,—the same mingling of the rights of war and the usages of peace. A pirate is *hostis humani generis*, the enemy of all mankind, and against whom all mankind declare war; but by municipal laws different punishments are affixed to this offence. In order, therefore, to bring the slave trade within the reach of the penalties of this crime, it is placed under the denomination of piracy. But what would be said of the statesman, who, in the present condition of the civilized world, with its vast commerce, conducted with such entire security, and most acknowledged legal and legitimate character, should send a score of armed vessels over the principal seas and most frequented coasts to board and examine all vessels for pirates? The only answer, that can be given to this question, would be, there are no pirates; we are seeking for slave traders. This is, after all, only employing the language of the colonies, and instead of calling the unhappy negro a slave, he is entered in the fraudulent invoice of the polluted, blood stained vessel as a log of ebony.

The President of the United States communicated, without delay, a copy of the convention to the Senate, where on the 22d of May 1824 a resolution, consenting to a ratification, passed in the affirmative by the majority of a single ballot beyond the constitutional provision. But this act was accompanied with three amendments, one, substantial and belonging to the essential features of the plan,—(and which

has, thus far, proved fatal to the further progress of this business) consisted in striking out from the first article the words, "*of America*," so that our coasts should be exempted from the cruises of vessels, seeking for slave traders. The British government declined at once to accept the ratification with this modification. The fact was signified to the American minister with some expressions, that indicated both disappointment and a sense of injury. We shall extract a portion of the communication rather for the purpose of illustrating the peculiar operation of the constitution in our foreign relations. The inconvenience, here complained of, does undoubtedly occur occasionally, by interposing a slight obstacle to the facility of negotiating, but it is a constitutional provision, indispensable to the proper management of our affairs, absolutely required by the nature of our institutions, and to which the good sense and enlightened judgment of foreign nations will be gradually reconciled.

"His Majesty's government have given the most anxious and deliberate consideration to this subject and, if the result of that consideration has been to decide, that they cannot advise his Majesty to accept the American ratification (notwithstanding the arguments alleged by you in the name of your government, in favour of such acceptance) I entreat you to believe, it is not from any diminished sense of the importance of the matter, to which that treaty relates.

"Nor do they, at all, underrate the desire, which you have assured me, and, as they really believe, was felt by the President of the United States to adopt the provisions of the treaty, such as it was transmitted to America. But the result is not the less inconvenient.

"A treaty, of which the basis was laid in propositions, framed by the American government, was considered here, as so little likely to be made a subject of renewed discussion in America, that not a moment was lost in ratifying it on the part of his Majesty, and his Majesty's ratification was ready to be exchanged against that of the United States, when the treaty came back, not as it had been sent to America, but with material variations,—variations, not confined to those stipulations, or parts of stipulations, which had been en-

grafted upon the original project, but extending to that part of the original project itself, which had passed unchanged through the negotiation.

“The knowledge, that the constitution of the United States renders all their diplomatic compacts, liable to this sort of revision, undoubtedly precludes the possibility of taking exception at any particular instance, in which that revision is exercised, but the repetition of such instances does not serve to reconcile it to the practice and feelings of the other contracting party, whose solemn ratification is thus rendered of no avail, and whose concessions in negotiation, having been (as all such concessions must be understood to be made) conditional, are thus accepted as positive and absolute, while what may have been the stipulated price of those concessions is withdrawn.

“In the instance before us, the question is not merely of form. A substantial change is made in the treaty, and, as I have said, on a point originally proposed by yourself, sir, as the minister plenipotentiary, and understood to be proposed by the special direction of your government.

“The right of visiting vessels, suspected of slave trading, when extended alike to the West Indies and to the coast of America, implied an equality of vigilance, and did not necessarily imply the existence of grounds of suspicion on either side.

“The removal of this right, as to the coast of America and its continuance to the West Indies, cannot but appear to imply the existence, on one side, and not on the other, of a just ground, either of suspicion of misconduct, or apprehension of an abused authority.

“To such an inequality, leading to such an inference, his Majesty's government can never advise his Majesty to consent. It would have been rejected, if proposed in the course of negotiation. It can less be admitted as a new demand, after the conclusion of the treaty.

“With the exception of this proposed omission, there is nothing in the alterations, made by the Senate of the United States, in the treaty (better satisfied as his Majesty's government undoubtedly would have been, if they had not been made) which his Majesty's government would not rather agree to adopt, than suffer the hopes of good, to which this arrangement has given rise, to be disappointed.”

To which we add one or two paragraphs from a letter of the American minister in reply.

“To give weight to this reasoning, it would seem an essential part of the facts, that the ratification, alluded to, had been transmitted to the United States, or, at least, that it was known to have taken place by the government of the United States, at the time, when the convention came under the consideration of the Senate. This, however, was not the case. That it had been ratified in Great Britain was neither known, or believed. It appears to have been an act, altogether voluntary, and, in no wise, referring to that, which was expected on the part of the United States. The argument, therefore, rests upon facts other than those, which were really applicable to the subject.

“While admitting, that the knowledge of those provisions of our constitution, which reserve to the Senate the right of revising all treaties with foreign powers, before they can obtain the force of law, precludes the possibility of taking exception to any particular instance, in which that revision is exercised, Mr. Canning urges, that this part of our system operates unfavourably upon the feelings of the other contracting party, whose solemn ratification, he says, is thus rendered of no avail; and whose concessions in negotiation, having been made (as all such concessions must be understood to be made) conditionally, are thus accepted as positive and absolute, while what may have been the stipulated price of those concessions is withdrawn.

“It may be replied, that, in cases of a treaty, thus negotiated, the other contracting party, being under no obligation to ratify the compact, before it shall have been ascertained, whether and in what manner it has been disposed of in the United States, its ratification can in no case be rendered unavailing by the proceedings of the government of the United States upon the treaty. And that every government, contracting with the United States and with a full knowledge, that all their treaties, until sanctioned by the constitutional majority of their Senate are, and must be considered as merely inchoate and not consummated compacts, is entirely free to withhold its own ratification on their part. In the full powers of European governments to their ministers the sovereign usually *promises* to ratify that, which his minister shall conclude in his name, and yet, if the

minister transcends his instructions, though not known to the other party, the sovereign is not held bound to ratify his engagements. Of this principle Great Britain has once availed herself in her negotiations with the United States. But the full powers of our ministers abroad are necessarily modified by the provisions of our constitution, and promise the ratification of treaties, signed by them, only in the event of their receiving the constitutional sanction of our own government."

But we are ready to admit, there is some ground for remonstrance. The convention, the American government finally refused to ratify, was actually and substantially proposed by them. The original draught, sent to Mr. Rush in June 1823, was, as he informs us in his letter of March 15, 1824, communicated verbatim, in the first conference on the subject, for the consideration of the British minister. Four alterations of detail were made in this instrument,—two of which the senate afterwards struck out; but the spirit, the principle of the original plan, was left untouched. The subject was a simple one;—and had been much discussed;—the house of representatives had passed a resolution, by nearly a unanimous vote, requesting the executive to take measures to form conventions with foreign powers for the purpose of declaring the slave trade to be piracy,—the American government having declined to accede to the terms offered by the British, and being invited to propose a substitute, had sent a draught to the minister, which he was authorized to sign, when the British government should comply with one condition,—that is to say,—declare the slave trade piracy;—and this was done.

We are bound to say, that, after these preliminary steps, expressions, indicating disappointment on the part of the foreign government, cannot be matter of surprise.

England transmitted to Mr. Addington, chargé ad interim, a verbatim copy of the original convention, ratified by the senate with the exception of the words, that exempted the waters of the American coast from the right of search, with full powers to conclude and sign. This was communicated to the government in November of the same year.

In answer to his note, Mr. Addington was informed in December 1824, that the President had determined to submit the whole subject to the consideration of Congress. This is the last official act of the government, concerning the slave trade. Though this negotiation, commenced with the best feelings in the world, and with the greatest promise of a successful issue, was very unexpectedly, and, we have no doubt to the disappointment of both parties, interrupted, the warmest assurances were given, that the earnestness of the two nations was unabated in this cause, and that they were still prepared to redeem the pledge, mutually and solemnly given in 1814 at Ghent.

If the slave trade was declared to be piracy, it only would be a necessary and consistent part of the system, that a pirate of this description, wherever, or in what manner found, should suffer the penalties, provided for the punishment of that offence. This is the broad principle of maritime law. But the convention between this country and England is in two very important details, at least, an obvious departure from the provisions of that code,—one limiting the number of vessels authorized to cruise,—and the second, prescribing, that the captured vessel shall be tried by the tribunals of its own country, not by those of the captor. Considerations, not easily obviated, having compelled the parties to withdraw the provision, that branded this odious crime with the infamous and fatal denomination of piracy on all seas, and the convention, itself, in important particulars, not having conformed to the strict rules, that usage has established in the treatment of this offence, there seems to be less objection, on the score either of principle, consistency or expediency, to limiting the operation of the instrument to such designated latitude and longitude, as shall produce an equality of jurisdiction. This arrangement would, however, be obnoxious to the general criticism, respecting the right of search, which, we believe, this government, though led somewhat hastily into unguarded stipulations on that subject, is not now, after a more mature consideration and thorough revision, prepared to surrender.

The abolition of the slave trade has been accomplished by gradual and extremely slow steps, and, at every step, difficulties arose, that appeared to arrest a farther progress. No evil, so extremely inveterate, so deep seated in the habits of an ignorant and barbarous people, acquainted, for nearly four centuries, with scarcely any other species of traffic, and maintaining no other intercourse with Europe and America, than by offering to the degraded and infamous part of their population, the disastrous allurements of a great and rapid profit, can be subdued, but by a most resolute and unwearied perseverance and the continued and renewed application of fresh and active remedies. If the United States, as a nation, were not literally the first to purify their flag from this abominable pollution, they are entitled to the full applause of an act, perhaps not so honourable, but in every way far more efficient. They began by declaring the trade piracy on board their own vessels,—following their example and at their suggestion, the British parliament have subjected the trade to similar penalties. We consider, therefore, the axe to be laid at the root of this evil, and that the proper application of a naval force, assisted by the establishment of European settlements along the coast, will gradually and finally extirpate it. How much such a process will be advantageous to British commerce, whose colonies are already numerous in that quarter, is not a consideration, that ought, for a moment, to retard the progress of the system. We can look on the colonies, already founded there, but as the first planting of the seeds of civilization, which, in process of time, will creep along the whole African shore, both on the Atlantic and the Mediterranean, and restore some portion, at least, of a continent, so celebrated in antiquity, to regular industry and established government. In a border of civilized states will consist an effectual barrier against, both the slave trader and the Barbary corsair.

We have only to remark, that in the ratification of the abolition slave trade convention in the senate, we have not been able to perceive the slightest indications of local influence. The opinions of the members do not appear to have

been dictated by a regard to the particular description of population, found in the respective States, unless, indeed, a slight preponderance of votes of senators, coming from parts of the country, where slave labour is not known, may be discerned in the minority; a circumstance to be attributed, perhaps, to the jealousy, that the more commercial portion of the community naturally feel on the subject of the right of search. The convention was ratified by the following vote—yeas 29—noes 13,—a considerable proportion of members from slave holding States voting in the majority.



## CHAPTER X.

## RELATIONS WITH THE NETHERLANDS.

*Holland fell in '94—Changes in government—Great trade with this country—King Louis well disposed—Compelled to abdicate—Confiscation of American property—Since 1815 negotiations of slight importance—Attempt to renew treaty of 1782—Not successful—Countervailing duties—Trade of Netherlands confined to export of foreign articles—Principle of reciprocity established by corresponding laws—Everett, chargé—Netherlands give 10 per-cent. bounty to their ships—U. States remonstrate—Difficulty removed—Netherlands' colonial principle very severe—Hughes, chargé—Huygens minister—Quabek and Heeckeren, chargés—Commercial treaty with Hamburg, Bremen and Lubeck.*

THE treaty, made in 1782, having no limitation, continued in force, till the creation of the kingdom of the Netherlands and the consolidation of the Dutch and Belgic provinces in 1814 and '15.\* Separate from the great and lucra-

\* In 1792, William Short of Virginia was appointed minister resident to the Hague. This appointment was notified to him in January of that year by Mr. Jefferson in the following terms:

"I have the pleasure to inform you that the President of the United States has appointed you minister resident for the United States at the Hague, which was approved by the Senate on the 16th instant. This new mark of the President's confidence will be more pleasing to you, as it imports an approbation of your former conduct, whereon he pleased to accept my congratulations."

In May 1794, John Quincy Adams of Massachusetts was appointed minister, who was succeeded in March 1797 by William Vans Murray of Maryland the last minister to the Netherlands, till the renewal of intercourse by the appointment of William Eustis of Massachusetts, envoy extraordinary and minister plenipotentiary, in December 1814. The executive, in June 1801, suspended the legations at the

tive trade carried on with the Dutch East and West Indies, and colonies on the American continent, this country has had from 1794 (with the exception of '99, when Holland was invaded by an English and Russian army, and during nearly the whole year her ports declared to be in vigorous blockade) a vast direct commerce till 1808 and 9. But the diplomatic relations, subject to uncommon vicissitudes, have been interrupted the greater part of the time. Holland fell the same year with Austrian Flanders, and the country on the left bank of the Rhine. This was the important result of the brilliant campaign of '94. From that period we trace the original Dutch confederacy through the successive changes of a national assembly, a Batavian republic, an aristocratic legislature, an elective monarchy, an hereditary monarchy, a department in 1810 of the imperial government, and lastly, to its union in 1814 and 15, with Belgium. The United States have not followed step by step these revolutions in its government; but a friendly intercourse has always been maintained, and till the abdication of Louis in July 1810, many openings were found for trade, notwithstanding the severity, with which the continental system was attempted to be enforced. The special application of that system to Holland, however in 1809 and the following years, subsequently gave rise to the same controversy on the subject of illegal seizures, the government has had with Spain and Naples. American property to a great amount was unjustly seized; and ultimately confiscated. That, which was not liable to the operation of the Berlin and Milan decrees, was sequestered under the 10th article of the treaty of Paris of March 1810.\* It is in these words, and is as unprincipled an act as can be conceived. "Every description of merchandise that has arrived in the ports of Holland in American vessels since the 1st January

Hague and at Lisbon. M. Van Polaner succeeded M. Van Berckel as minister resident, after the appointment of Mr. Adams. M. Polaner was accredited in 1796 from Holland, which, at that time, went under the name of the "Batavian Republic."

\* Martens, vol. xii. p. 307.

1809, or which shall hereafter so arrive, shall be put under sequestration, and shall belong to France, to be disposed of according to circumstances and the political relations of that country with the United States." This treaty, the Dutch admiral Verhuel was obliged to sign with M. de Champagny. It was the preliminary step to the abdication of Louis, an event, indeed, that followed a few months after, but the king of Holland, in consenting to the sacrifices required by this instrument, doubtless hoped to preserve the independence of a people to whom he was evidently attached, and over whom, much against his inclination, he had been appointed to reign. Louis in his own hand made observations on the different provisions of this treaty. They have been preserved, and have since been published in a manner, that leaves no doubt of their authenticity. In regard to the 10th article just quoted, he remarks, "I expect from the justice of the Emperor that he will express his intentions in a different way, as it respects this property. I think it should be treated as property under similar circumstances has been in Spain and Naples, and that the same date should be assigned for the application of the article."\* This arrangement would have placed the property in dépôt subject to future examination and decision. It has, at least, the semblance of fairness. The proposition was free from the licentious, unsparing injustice of the original article. The independence and upright intentions of Louis in this affair deserve to be mentioned with applause, a compliment equally due to his undeviating good treatment of American commerce. But, in reality, we believe this would have been but a milder and less expeditious mode of transferring this American property to the imperial treasury. It amounts to little more than changing the phrase. The history of the claims of this country on the Dutch government does not differ in principle from that on Spain or Naples.

\* In a letter of December 1809, Napoleon says to Louis, "You have received in the ports of Holland every American vessel, rejected from my harbours, that presented itself to you." Documents sur la Hollande, vol. iii.

The negotiations with the Kingdom of the Netherlands,\* since the peace of 1815, present little variety, or novelty. They relate solely to claims for spoliations, vindicated on the principle, already examined and discussed ;—and to the concluding of a commercial convention, containing the doctrine of reciprocal importation and tonnage charges and duties. On the first topic we refer the reader to the chapter on France, and as to the last, we shall now detain him no longer than is necessary to give a full account of the progress and termination of that business.

We have already said on a preceding page, that Mr. Eustis† was appointed, in 1814, envoy to the Netherlands, the first minister since 1801, when the intercourse was suspended. In 1818 an attempt was made by the United States to renew the ancient treaty of 1782 with modifications, adapted to the actual condition of both countries. This failed in consequence of the law of March 3d, 1815, requiring the repeal of all discriminating duties on the part of foreign nations, as it regarded the United States, while it provided only a partial repeal on the part of the U. States, as it regarded foreign countries. The statute did not rescind the charge on tonnage, and the import only on merchandise, the produce or manufacture of the nation, to which the vessel, in which imported, belonged. On the other hand, the Netherlands law repealed the countervailing duty both on tonnage and merchandise, whatever might be its origin. This inequality of municipal regulations proved fatal to a renewal of the treaty of 1782, one of the most ancient in the collection, and the only one, concluded with the Dutch Government. The course of trade of the Netherlands, also, presented great difficulties. Few articles, either of the produce or manufacture of that kingdom, were objects

\* This title, being at present established for that recent creation, it will be applied in this chapter. The German appellation, slightly corrupted, is now universally adopted in our language. The seat of this government is, alternately, at the Hague and at Brussels.

† M. Chauguion was a minister from the Netherlands to the United States in 1815, the first accredited since the peace.

of exportation, that branch of trade consisting principally of foreign productions.

In the supposition, that the law of March 1815 was abrogated in regard to the Netherlands, it would have been necessary to have gone through an entire revision of all the modern commercial treaties. The proposition of the United States, demanding to be admitted into the Dutch colonies on the footing of the most favoured nation, constituted another serious obstacle. This was rejected from the consideration, that the United States possessed no colonies, and could offer no terms of reciprocity in that particular ;—a refusal, partaking somewhat of an invidious air, for as most other nations held colonies, whether small or large, the prohibition appeared to apply exclusively to this country. In another part of this work, we have treated in detail the question of colonial trade, but it will be no repetition to remark in this place, that the position of the Netherlands government exhibits a developement, to an extreme degree, of the principle, asserted by the European States in regard to their colonial systems. That power, at the close of the great political reforms, regenerations, remodellings and recastings of 1814, 1815, owned but the small and decayed islands of St. Eustatia and Curaçoa, (and two others so obscure as hardly to merit being mentioned) whose whole produce was confined to a few articles and in limited quantities. On the other hand, a country, affording the greatest variety of native staple products, able at this moment to supply all Europe with flour, tobacco, lumber and cotton wool, with a most extensive coast, and whose markets must every day become more valuable from the rapid increase of wealth and population, was denied admittance to these islands, because she possessed no colonies, whose trade could be offered in return. The application of the principle in this particular case, certainly, appears altogether abstract. There are, also, occasions, when a trade with the United States is of indispensable necessity to save the islands from starvation, caused by drought or hurricanes. No foreign country, it is true, is under an obligation (except, indeed, urged by those

great principles of humanity and civilization, which fall little short of necessity of the most rigid kind) to rescue a population in that unfortunate condition from suffering or death. All are at liberty to forego the temporary advantages, that this lamentable state of things offers. But there seems to be some equity, or reason in requiring, that a trade, occasionally of the greatest importance to the islands themselves, should be accompanied with a benefit and security of a less precarious and even capricious character to the people, that can alone conduct it. In a practical view it is the more remarkable, that the Netherlands should hold to a colonial monopoly with so much earnestness, as the commerce of the kingdom is now confined chiefly to a traffic in foreign products and manufactures.

Alexander H. Everett, of Massachusetts, was left a chargé d'affaires at the Hague by Mr. Eustis, who returned in 1821 to this country. The commercial treaty of 1822, was not renewed by the American minister, but an arrangement, equally beneficial, though of a less permanent character, was effected by means of corresponding municipal regulations. In October 1816, the Netherlands adopted the terms offered by the countervailing duty law of March 1815, to which we have already referred, and in all imposts and tonnage charges, placed the trade of this country on a footing of equality and reciprocity. But as the act of March 1815 repealed only the impost on merchandise under certain circumstances, the United States, in order to establish on their part a more perfect equality and reciprocity, in April 1818, removed, also, the tonnage charge in regard to Netherlands ships. Matters remained in this state till the autumn of 1822, when the Netherlands government, either perceiving that the carrying trade from their ports was falling into foreign hands, or not deriving equal advantages with the United States from the system of reciprocity, in consequence of the circumstance, that most of their exportations consisted of articles, not the produce or manufacture of their own country, in favour of which only our countervailing duties were rescinded, published a new tariff of duties, which, among

other things, provided, that "one tenth of the duties, paid upon the importation or exportation of all goods, shall be returned, when the same are imported, or exported in Dutch vessels." It is unnecessary to say, that this provision was a direct bounty on Dutch navigation, and as direct an encroachment on the system of equality and reciprocity, though the minister, M. de Nagell was not disposed to affix to it that interpretation.

"By the laws of 12th June 1821 and 10th August last, the duties remain without distinction the same for foreign ships and for national. This restitution of a tenth for merchandise, imported by the ships of the Netherlands, has done no more (as the 11th article of the law of the 12th July 1821, expresses it) than to give encouragement and proper aid to the works of the nation. This restitution, therefore, supplies the place of the premiums of encouragement, which the government might have granted to every ship, built in the Netherlands, a disposition, which certainly never could have given room to the American government to complain of an inequality of treatment in respect to their ships. If the government of the United States had found it good to grant a similar premium to the American ships, surely the King could have found in that no cause of remonstrance. His Majesty would have only seen in it a bounty, intended to encourage or favour the manufactures of the nation."

The act of January 7, 1824, in anticipation of the restoration of countervailing duties, on the part of foreign nations, with whom the principle of reciprocity was not secured by treaty, gave full authority to the President to withdraw by proclamation from the navigation of countries, adopting that course, the privileges and advantages, conferred by the acts of March 1815 and April 1818. But as the Netherlands government maintained, in its correspondence on the subject, that the ten per cent. bounty of August 1822 was solely intended to encourage national ship building, and, by no means, to affect the tonnage or impost charges on exportations or importations, and, as the act of January 1814, did not, in precise terms, invest the executive with power to determine what should be considered a revival of counter-

vailing duties on the part of a foreign nation to the disadvantage of the United States, a doubt arose, whether the inequality, created by the Netherlands tariff, could be counteracted by the retaliatory provisions of that law. The matter was, therefore, referred to the consideration of Congress, and a law was passed, which met the difficulty.

In March 1825, John Hughes was appointed a *chargé d'affaires* to the Hague, having been transferred from Stockholm,—the only change or incident that has occurred in the relations with the Netherlands to the present hour. That government has been represented in this country since 1826 by the Chevalier C. D. E. I. Bangeman Huygens, an envoy extraordinary and minister plenipotentiary. In the years 1819 and 1824, the Viscount de Quabeck and the Baron Heeckeren were respectively accredited as *chargés*.\*

\* In 1815, an arrangement was completed at Vienna, for the establishment of a Germanic Confederation, consisting of sovereign princes and free cities, and including, with some slight exceptions, the whole of the ancient German empire. The emperor of Austria is the first member of the confederation in point of territory, revenues and population. There are four free cities, Frankfort, Lubeck, Bremen and Hamburgh, formerly members of the celebrated Hanseatic League. The diet of this confederation is holden at Frankfort; and the object of it is stated to be the security, both foreign and domestic, of Germany in general and the independence and sovereignty of each individual state. With the free cities, that have navigation, this country has been engaged several years in an occasional negotiation for the purpose of introducing the modern principle of commercial reciprocity. And within the last twelve months an arrangement, to this effect, has been concluded. In June of this year, the ratifications of a treaty with Hamburgh, Bremen and Lubeck, were exchanged at Washington. There is nothing in the negotiation, which requires that a minute account should be given of it, nor in the treaty, that will render any thing more than an abstract, necessary.

“ This treaty provides that all produce, manufactures, or merchandise, of any foreign country, which may lawfully be imported into the territories of either party, in its own vessels, may also be imported in vessels of the other, without payment of any higher duties. The same provision is made with regard to exportation and reexportation.—Bounties, duties and drawbacks, as well as port charges, are to be the same on the vessels of both parties.



"Neither party is to impose on the importation or exportation of any article the produce of the other, any higher or other duties than on the like article from or to any other foreign country; nor shall any prohibition be imposed, not extending equally to all other nations.

"No preference shall be given, by either of the parties, in the purchase of the produce of one, brought into the ports of the other, on account of the character of the vessel in which it was imported.

"A vessel, owned exclusively by citizens of either of the three Hanseatic cities, the master being a citizen of either, and three-fourths of the crew citizens of any of the said cities, or of the states of the German confederation, shall be considered as belonging to Lubeck, Bremen or Hamburg.

"Any such vessel, with her cargo, coming from either of the said ports to the United States, shall be deemed to have cleared from the republic to which she belongs; and any vessel of the United States, trading to the said ports directly, or in succession, shall be on the footing of a Hanseatic vessel making the same voyage.

All merchants, commanders of ships, and other citizens of either party, shall be free to manage their own business in the ports and places belonging to the other; to be treated as citizens of the republic in which they reside, or at least placed on a footing with the citizens or subjects of the most favoured nation.

"Citizens of each party, within the jurisdiction of the other, shall have power to dispose of their personal goods, by sale, donation, testament or otherwise; and their representatives, citizens of the other party, shall succeed to the same in case of death, paying the same dues only as are required from the inhabitants. The heirs are allowed three years to dispose of real estate, if prevented, as aliens, from holding it.

"Each party engages to protect the persons and property of citizens of the other; leaving the tribunals of justice free to them on the same terms as to its own people.

"No particular favour, respecting commerce or navigation, shall be granted to other nations by either party that shall not immediately become common to the other, on the same terms.

"The convention to be in force for twelve years, and until twelve months after notice from either party of an intention to terminate it. If one or two only of the Hanseatic republics shall give or receive such notice, the treaty still to remain in force with regard to the others."

## CHAPTER XI.

## CONVENTION OF 1824 WITH RUSSIA.

*Singular controversy—Only point ever in dispute—Ukase of September 1821, claiming the North West—Letter of Russian minister—Grounds of claim—Americans on coast in '83—Russian titles examined—Discovery—Occupation—Possession—Behring—Tschirikoff—Cook—La Perouse—Dixon—Vancouver—Baranoff—No foundation for claim—Renounced by convention of 1824—Always on best terms with Russia—Very useful as mediator—No treaty of commerce—Great trade—American and Russian ministers.*

SINCE the general peace of Europe there has been but a single moment, when the friendly relations of the United States with Russia were interrupted, and that in a manner, so singular and unexpected, as to be attributed rather to accident, or to an ignorance of claims and boundaries, than to a settled design to encroach upon the possessions of this country. The act, also, may, in all probability, be traced to the influence of individuals, concerned in the trade of the Russian north-west. But for the proper understanding of the subject, it is necessary to place before the reader, in an authentic shape, an account of this transaction, which derives almost the whole of its importance, so far as it respects Russia, from the circumstance of its being the only cause of misunderstanding, though of a transient nature, the United States have ever had with the imperial government.

In September 1821, the Emperor Alexander issued a Ukase in the following terms:

"SECT. 1. The pursuits of commerce, whaling and fishery and of all other industry on all islands, ports and gulfs, including the whole of the north-west coast of America, beginning from Behring's Straits to the 51st degree of northern latitude, also, from the

Aleutian islands to the eastern coast of Siberia, as well as along the Kurile islands from Behring's Straits to the south cape of the island of Urup, viz. to the  $45^{\circ} 50'$  northern latitude, are exclusively granted to the Russian subjects.

"SECT. 2. It is, therefore, prohibited to all foreign vessels, not only to land on the coasts and islands, belonging to Russia, as stated above, *but, also, to approach within less than an hundred Italian miles.* The transgressor's vessel is subject to confiscation along with the whole cargo."

At an early period after the peace of 1783, our ships had found their way to the north-west coast in pursuit of the valuable furs, collected on those inhospitable shores. The habits of our seamen were well adapted to this peculiar and dangerous navigation and employment, and as little capital, beyond the equipment of the vessel was required, the impoverished condition of the country, during that critical situation of our affairs, presented no serious obstacles to enterprises of that description. This traffic was conducted with so much zeal and spirit, that in the first and second years of the present century, there were no less than fifteen American vessels on the coast, though, of late, the trade has decreased, in consequence of the wasteful and wanton destruction made of the sea otter by the Russians and Indians. But it is, still, valuable, not only on account of the furs, but as connected with a great variety of expeditions round Cape Horn, in which little positive capital is embarked, but that lead to rich returns in teas, silks, sugars and other articles of general consumption. No molestation was encountered in the prosecution of this traffic till the year 1821, and though it was, of course, always known, that the Russians held settlements towards the head of the continent at the Aleutian islands and in the neighbourhood of Behring's Straits, it never occurred to any one, that the imperial government would undertake, without notice to foreign powers, to appropriate to itself the whole coast of the north-west, in the least degree, valuable for the fur fishery. The only grounds, that, at all remunerate the expense and risk of a mercantile enterprise, lie to the north of the 51st degree, and the higher

latitudes of the coast, most convenient and accessible to the Russians, being now nearly exhausted, the partiality, which the fur company of that nation manifested for the 51st degree of north latitude, is at once explained.

Our commerce has never been assailed in a more fell, unsparing manner, and, yet, in the European seas it has passed through every variety and degree of vexation, insult and oppression. A Berlin decree, or an order in council sealing and investing the distant and desolate coast of the north west! The ancient and celebrated doctrine of the *mare clausum* of Selden applied to an ocean, four thousand miles in breadth! Our ships, after toiling through a long and difficult navigation round Cape Horn, and passing up the opposite shore of this hemisphere, find themselves menaced with a maritime persecution and proscription, only reminding them of the tyrannical edicts of the old world from its absurdity and impotence. This unexplored, unclaimed region, the scene for thirty years of the undisturbed trade of several nations, has not escaped the contamination of the modern, monstrous principles of maritime legislation, and, as our merchant vessels have gradually and successively penetrated to every shore of the globe, they have not yet found a spot, which, in the course of the last half century, has not been visited with a blockade or the exercise of some despotic usurpation of war.

Having recited the Ukase of the emperor, we shall now examine the grounds on which this claim was founded. They are contained in a letter of February 28, 1822, of M. de Poletica, (at that time Russian minister in this country) to the Secretary of State;—the subject is deserving of a critical discussion on account of the protracted and unsatisfactory controversies, that have arisen between the United States and Great Britain, concerning much of the territory, claimed, on this occasion, by Russia.

The imperial envoy asserts, in the official note we have mentioned, the three following titles, on the part of his government, to that portion of the north west coast of America, which extends to the 51st degree of north latitude, viz. the

title of the first discovery ;—the title of first occupation, and thirdly ;—the title of a long and undisputed possession. On examination it will probably be found, that no one of these titles can be maintained by the facts, that are known to exist upon this curious and interesting subject ;—facts, which the reader may find in the celebrated and perfectly authentic voyages of Behring and Tschirikoff by Muller ; and of Cook ; la Perouse, Dixon and Vancouvre. Not having access to the unpublished journals of those navigators, to whom M. de Poletica\* alludes, we know not what value belongs to their authority ; but probably many of them were little more than the chiefs of those small hunting establishments, the Russians are known to possess in the high latitudes of the north west. We are farther confirmed in this opinion from the circumstance, that Dixon and Vancouvre complain greatly of the ignorance of the Russians in Cook's River and Prince William's Sound. They appeared to know very little of the geography of the coasts, a degree of ignorance that could not have existed, if the discoveries had been made by

\* Extract from the letter of the Russian minister. "In 1728 the celebrated Capt. Behring made his first voyage. The recitals of his discoveries attracted the attention of the government, and the Empress Anne, intrusted to Capt. Behring (1741), a new expedition in these same latitudes. She sent with him the academicians Gamelin, Delisle, de la Croyere, Muller, Steller, Fisher, Krasilnicoff and others, and the first chart of these countries, which is known, was the result of their labours, published in 1758. Besides the strait, which bears the name of the chief of this expedition, he discovered a great part of the islands, which are found between the two continents ; cape or mount St. Elias, which still bears this name, upon all the charts, was so called by Capt. Behring, who discovered it on the day of the feast of this saint, and his second captain Tschirikoff, pushed his discoveries as far as the 49th degree of north latitude. If the imperial government had, at the time, published the discoveries, made by the Russian navigators after Behring and Tschirikoff, (viz. Chlodiloff, Screbreanicoff, Krassilnicoff, Paycoff, Poushcareff, Lazareff, Medwedeff, Solowieff, Lewasheff, Krenitsin and others), no one would refuse to Russia the right of first discovery, nor could any one deny her that of first occupation."

skilful and enlightened men, previous to the voyage of Cook. We shall presently have occasion to quote the unanswerable declarations of that great navigator to the same point.

America was, doubtless, seen by the Russian navigators, Krupischew and Gwosdew, as early as 1730 or '31, about latitude 66, but they obtained nothing beyond a hasty glimpse of the coast. On the 4th of June 1741, two vessels, called the *St. Peter* and *St. Paul* (whence *Petropaulowska* on the coast of *Kamtschatka*) sailed from *Awatchka* bay for the coast of America. One was commanded by Commodore *Behring*, who had made a voyage between the two continents in 1728, and the other by *Alexei Tschirikoff*, one of his lieutenants on that voyage. On the 20th the two ships separated in bad weather. On the 15th of July, according to *Steller*, a physician embarked with *Behring*, the commodore's ship made land in latitude 58. 28 north;—we omit the longitude, the art of navigation being imperfect in those days, and as the coast here trends nearly east and west, it was not easy to ascertain their exact position. Here they saw a high mountain, which they called *St. Elias*, a name it has preserved to this day. *Steller*, and the ship master, both landed to explore the gulf, that *Cook* afterwards called *Prince William's Sound*.

After his separation from the commodore, *Tschirikoff* sailed for the American coast, which he, also, made on the 15th of July, in latitude 55. 36, according to the geographer *de Lisle*. Here he lost two boats, with their crews, in a singular manner, and, in consequence of that misfortune, had no means of communicating with the natives or the country. He now set out to return, but, having met with contrary winds, he was compelled to run 100 German miles along the coast to the southward. Notwithstanding the assertions of the author of this voyage, it may reasonably be doubted, whether *Tschirikoff* actually saw the land in going south, for it appears, that the weather was foggy and tempestuous. At any rate, he did not land, and possession of the country was not taken either by him or *Behring*.

These are the only claims, we have been able to find,

that the Russians have to discoveries on the north west. As we said before, we make no account of the navigators mentioned by M. de Poletica, for Cook says (vol. 2d, page 497; 4to ed.) "that the Russians at Oonalashka are strangers to every part of the American coast, except what is opposite this island;"—again at page 503, in examining a map shown him by Ismyloff, containing all the Russian discoveries to the eastward as late as 1778, "if we exclude the voyages of Behring and Tschirikoff, the discoveries of the Russians to the eastward will amount to little or nothing." This matter, concerning the chart, was afterwards confirmed by Captain King on seeing other charts in the possession of Major Behm, at that time governor of Kamtschatka, &c. Again, page 505, Cook says, all the Russians here (Oonalashka) confessed they had no settlements as far east as Oomanak; and had made no discoveries beyond that point. In fact, all the certain and accurate knowledge, the world possessed concerning those coasts to the time of Vancouvre, from Nootka Sound as high as the 71st degree of north latitude, with the exception of four degrees from 50 to 54, where Cook was forced off by bad weather, was derived from the third voyage of that unrivalled navigator. Even la Perouse, excellent as he also was as a navigator, and surpassed by few in justice and magnanimity, did little more than confirm, (or to use his own phrase, "verifier") the observations of Cook, which, he declares, are "remarkably accurate." We are free to confess, we do not feel ourselves justified in abandoning the authority of the greatest modern navigator to the mere influence of a number of Russian names, (never heard in Europe) and of journals that have never been subjected to criticism. Because, therefore, there is a faint probability (though the matter is after all quite uncertain, as we shall soon see) that Tschirikoff saw the coast only in about 56, the Russians claim 100 Italian miles below 51; but it is evident, that if they have a right to 51, they have, also, a right to 42, being Port St. George in New California. At any rate, we are utterly at a loss to understand, why the Emperor fixed upon a medium between Columbia River and the original bound-

ary of the Russian Company. But we shall let this matter rest, and as M. de Poletica has naturally appealed to the laws of nations, we shall quote a short passage from M. de Vattel in relation to this point. "But it is questioned, whether a nation can by the bare act of taking possession, appropriate to itself countries which it does not really occupy. In effect, when navigators have met with desert countries, in which those of other nations had, in their transient visits, erected some monuments to show their having taken possession of them, they have paid as little regard to that empty ceremony, as to the regulation of the Pope, who divided a great part of the world between the Crowns of Castille and Portugal." Now, if a quibble could be made an argument, it might be said that the Russians only saw;—they did not take possession in the manner, practised by all European nations; they left no memorial, no evidence to prove to other navigators and generations, that the land had been seen and claimed. But Cook took possession, in the "diplomatic" method, of many parts of the coast, and M. de la Perouse, in practising this ceremony in relation to the Port des Francais, makes this remark, "that if the French government had thoughts of establishing a factory upon that part of America, no nation could have the least right to oppose them on that spot."—But if, according to the Russian doctrine, the *title of discovery*, alone, presents such a powerful claim, it is, at once, evident without more ado, that the Russian American Company has no possible right to the 51st degree, because one of their nation discovered to the 55th. For the English Drake, in 1579, sailed as high up as 48, and regularly erected his monument, buried his bottle, and fired a salute, and the country, from that day to this, has been called New Albion. We shall say nothing concerning the Spanish possessions in California, established there long before these Russian navigators and academicians embarked upon their voyage of discovery.

We have, still, two remarks to make before finishing this portion of the discussion. We are not aware upon what authority M. de Poletica says, that Tschirikoff discovered



the land as far south as 49, for we believe his latitude has never been perfectly ascertained ;—the lowest point having been fixed at 55. 36, and the highest at 58. La Perouse called a cape in latitude 55. 50 after this navigator by way of compliment, and not because he was supposed to have first seen it. For the same reason, a bay has been called after Behring, at least two degrees south of Mount St. Elias. The first latitude of Tschirikoff is that established by Muller ; but Ismayloff showed a chart to Captain Cook at Oonalashka, according to which, Behring made the land in 59½ and his lieutenant in 58.

We have not had the advantage of seeing the map published in 1758, of which M. de Poletica speaks, but we leave it to the reader to determine, how much accurate information this map could have conveyed, when Behring, on his return, was tossed about, at the mercy of the winds and waves, with all his academicians on board ; was confined himself with the scurvy below ;—struggling constantly against westerly winds,—with continued fogs, which “ greatly embarrassed their navigation ;”—once for a fortnight, saw neither sun nor stars, and, after showing by his courses, that he was entirely ignorant of his situation, was cast away, on the night of the 5th of November, on the east side of an island, since called by his name. The commodore died on the 8th of December. “ It may be said, he was almost buried whilst alive, for the sand, rolling down almost continually from the side of the cavern, or pit, in which he lay, and covering his feet, he, at last, would not suffer it to be removed, saying he felt warmth from it, when he felt none in other parts of his body ;—and the sand thus gradually increased upon him, till he was more than half covered. So that when he was dead, it was necessary to unearth him to inter him in a proper manner.”

Tschirikoff saw only the coast. De La Croyère, the principal academician in his vessel, having been ill for a long time, fell down dead on the deck upon arriving at St. Peters and Pauls. We have further grounds to call in question the accuracy of the observations of these two navigators from the

circumstance, that two of the principal academicians with Behring disagreed as to the time of making the coast ;—Steller placing it on the 15th, and Muller on the 18th of July. “It is difficult,” remarks Captain Cook, “to understand the account of Behring’s voyage. Nor do I know, that, what I called Mt. St. Elias, is the same conspicuous mountain, to which he gave that name. And as to his Cape St. Elias, I am utterly at a loss to know where it lies.” One thing is certain, that Tschirikoff could never have seen the *continent*, if his latitude is correctly given, because Vancouvre has clearly proved, that the whole coast in that direction is completely covered by two vast Archipelagos. Another thing is, also, certain, that no Russian in the year 1770, had made discoveries farther to the eastward than Oonamack.

We shall now make some remarks upon the second title of M. de Poletica ;—that of occupation ; and shall endeavour to show, that the Russians did not occupy the north west, before traders of several nations came there, and pursued a traffic with the natives without molestation or hindrance. It has been stated, that Cook visited, with the exception of four degrees, every part of the coast with the utmost care ; and an ample and intelligent account of that examination has been published. He saw no Russians upon the coast, and heard nothing of them, till two Indians in a canoe, off what is now called Kodiak Island, brought a packet on board the ship, supposed to be written in the Russian language ;—upon the island of Oonalashka he found one house and two store houses. The southern edge of the island is in lat. 53 and its eastern side is 3 degrees of longitude from the most western point of the peninsula, called on all the maps, Alaska. Cook found the inhabitants of the coast in the possession of beads and iron, which he supposes to have been procured indirectly from the Hudson Bay Company. He is of opinion, they could never have been obtained in trade with the Russians, because these Indians had great quantities of otter skins, which they held very cheap. This opinion is, probably, the true one, for it is not at all likely that it was native iron, and Behring saw a long knife in the girdle of an Indian chief at

Oonalashka; it is evident, this could not have been procured from the Russians. Again, speaking of the natives in Cook's river, Cook remarks "I will be bold to say that the Russians have never been amongst them." This is the authority of Cook in 1778.

La Perouse in 1787 did not see a Russian upon the coast, and, when at Kamtschatka, he says that the Russians had no trade with the inhabitants of that country. He went no higher than the Mount St. Elias of Behring.

The maps of Cook and La Perouse are admirable, and plainly show with what infinite care and skill those celebrated navigators surveyed those coasts, till their time, unknown to the Russians as well as to all the world, notwithstanding the multitude of academicians and navigators employed in their examination.

In 1786, Portlock and Dixon, two officers in Cook's third expedition, passed a summer on the coast for the purposes of commerce. They were fitted out by the King George Sound Company; Portlock was the leader of the expedition. Each of these captains has published an account of his voyage, but we believe that of the latter is generally reckoned the best. Dixon is the first European, who saw Russians on the main land, with the exception, perhaps, of Meares, who was there a few months before him, but as we have not seen his voyage in detail, and as we are not acquainted with the proceedings of the Spanish navigator, who sailed as high as latitude 56 in 1775, we cannot speak with absolute certainty as to this point. He found a party of thirty-six in a place in Cook's River, which he called Coal Bay in lat. 59. They had, however, no permanent settlement there, but came from Oonalashka to collect skins. He gives it as his decided opinion, that the Russians, at this time, did not trade further to the eastward than Cape Hinchinbrooke in lat. 60, 40, and about 6 degrees west longitude from Mount St. Elias. Both these captains, however, found Meares, an Englishman, commanding the Nootka, in Prince William's Sound, where he had been compelled to pass the winter of 1785, 86.

We now come to the voyage of Vancouvre. That navi-

gator found no Russians in 1794, till he came to Kodiak and Prince William's Sound. They appeared, however, to be in a great measure temporary settlements, and they had none further east than Port Etches in the island of Hinchinbrooke;—they were independent companies, and consisted altogether of about four hundred persons. Vancouver remarks, that the Kodiak and Oonalashka Indians, whom the Russians treated with great kindness, appeared much attached to them, but they kept no sort of terms with the natives of the coast, with whom they frequently fought, and who, indeed, had killed numbers of their men.

We have said nothing of the coast to the northward of Bristol Bay, because it has never been pretended, that the Russians had any settlements on that side. That is the region of large amphibious animals, and others do not, in consequence, frequent the shores.

Before making any farther observations on the title of occupation, it is necessary to examine, briefly, a claim, advanced by M. de Poletica, in a letter of April 2d, 1822, founded upon the discovery, in 1789, by captain Haro in the Packet St. Charles, of eight Russian establishments in lat. 48 or 49, containing four hundred and sixty-two individuals, and known to be the descendants of the companies of Tschirikoff, supposed till that time to have perished. But it is quite evident, at first blush, that if these four hundred and sixty-two individuals were Russians, this navigator could never have been acquainted with the number of Tschirikoff's men, that went on shore. It was in 1741 that Tschirikoff lost his men;—forty-eight years before the arrival of the Haro on the coast;—he lost two boats;—the long boat, containing the pilot and ten men;—and the small boat, containing the boatswain and probably not more than five men, though the number is not stated;—say in all eighteen men.—Supposing, that each one of these men married the instant on getting to land, the colony must have doubled once in ten years to have produced four hundred and sixty-two individuals in forty-eight years. Such an event is known to be impossible in any state of society, more especially on the north west, in a rude climate,

upon a sterile coast, and among bold, treacherous and crafty savages. Separate from this consideration, other circumstances make the account improbable. No one states Tschirikoff's latitude lower down than 55. How then did these men get six or seven degrees south? It is, moreover, evident that at first they must have been made prisoners, for the ship waited five days for them, and, after a short absence, returned again to the coast and saw nothing, but two boats of Indians, who made for the vessel, but, on discovering men on her deck, put back again for the shore. It is probable from the character of the north west Indians, that the Russians were murdered, or the boats might have been lost in the currents, which appear to be irresistible on some parts of the coast. La Perouse lost two launches and twenty-one men at Port des Francais in that manner. The part of the coast, where those Russians are said to have been seen, is called Cape Flattery by Cook, and Anse des Martyrs by la Perouse; and we have here a more serious objection, than any we have mentioned, to the probability of this account. Cook, himself, was close in with this land, and before 1789 seven English trading voyages and two American were made to the coast, and yet these Russians were never seen. It is hardly credible, they should not have discovered Cook or some one of the other vessels, that they should not have made signals, or that the Indians should not have mentioned them either to the navigators or to the traders, for their existence must have been known to the natives. The truth is, doubtless, that this was a tribe of Indians. M. de Humboldt in his "Essai Politique sur le Royaume de la Nouvelle Espagne" places the voyage of Haro in the year 1788, and he, also, mentions a circumstance, which would, in some degree, disqualify that navigator and his companions from deciding upon the origin of the supposed Russians, "*not a man of the whole expedition understanding Russian, they could make themselves understood only by signs.*" Humboldt makes this remark in relation to the intercourse, which the expedition had with the Russians at the north. If Haro had discovered a colony of Russians in lat. 48, we may readily

suppose that M. de Humboldt would not have failed to mention it, on account of the importance and singularity of the circumstance. The authority of this accomplished traveller in this particular instance must be unexceptionable, for not only is the whole account in his work extracted, in part from manuscripts in the royal archives at Mexico, but the sketch of the voyage of Haro is abridged from the relation of one of the persons, engaged in the expedition.

These are the claims of the Russians to the title of occupation. It appears by evidence, that, up to the time of Vancouvre, they had no settlements on the main land, and that they did not even *trade* beyond Cape Hinchinbrooke. And yet before the year 1794, several other nations had there driven a free and secure traffic, and by the extent and safety of that trade, so far, at least, as the Russians are concerned, had clearly earned a right to continue it.

We do not precisely understand what the Russians mean by occupation. Is it *occupation* for ten men to push a seal skin canoe ashore in a small cove, kill a few otters, live several months upon sea dogs, sea cows, whale's flesh and cranberries, and then paddle back again to a frozen island to pass the winter, like some of the animals of those climates? This is all the occupation the Russians have had till within a few years, and we have no objection to call it a genuine one, because we think all men will not hesitate to say, that a stout ship, well manned and armed, well equipped and well stored with linen and woollen goods, axes, beads, arms, knives, kettles, looking glasses, &c., and well moored in a safe cove, with hundreds of natives crowding about her, constitutes, in reality, a much better occupation.

The simple fact is, that the country belonged to independent tribes of Indians, and the settlements of the Russians upon the islands were for the purpose of trading with those Indians. Such settlements could no more give to the Emperor a right to the north west than the hunting lodges of the North West Company upon the Missouri and Mississippi could give to his Britannic Majesty a right to all the countries, through which those rivers flow. Moreover, how

shall we determine the limits, or direction of such an occupation? The Russians say, that a small tent, or a boat turned upside down upon the island of Kodiak, gives them actual possession of the continent, at least, to the extent of ten degrees of latitude—why not, also, ten degrees of longitude? They have occupied and maintained one with as much reality and efficiency as they have the other. And if they may extend ten degrees, why not twenty? If this sort of reasoning is to be admitted, we have no doubt, it can be proved, that the hunters of the Canada and Hudson Bay Companies have absolutely secured a genuine title, not only to the whole of the northern parts of North America, but to the whole of the north west—nay more, if the mere edict of a government can confer territory, it is impossible to say, how much of the north west may not belong to some of the States of these United States by the force of their ancient charters. We shall presently see, that nothing, but an accident, prevented the Russians from making a settlement as low as Columbia River in 1806.

The understanding of the commercial world in regard to the north west always has been that it is a vast market for the purchase of furs, and the English since 1785, and the Americans since the year '88 have resorted there for that purpose, and neither nation has received any hindrance or molestation from the Russians. On the contrary, the Americans have had a peaceful and prosperous trade with the latter people, and not only, in two or three instances, have saved them from being starved to death, but have sold them vessels and carried on trade in partnership with them.\* The Russians have had little share in the fur trade, seldom sending their skins to Canton, and collecting a much smaller proportion than the Americans. The truth, therefore, is, that on this ground the Russians have the least claim of all these three people to the north west. Nay, we are far indeed from believing that the Russo-American Companies would have ever been founded, or the imperial ukases issued, if

\* See account of Capt. Winslow published in Langsdorff.

Cook had not surveyed the bearings and features, and discovered the immense wealth of that coast, and if the Americans and English had not instantly pushed into this unknown and dangerous trade, making all the world believe that the true El Dorado of the new continent was, at last, explored.

The English, it is true, at the commencement of this trade fell into an unhappy difference with the Spaniards. A short history of the controversy will serve, still farther, to invalidate the pretensions of the Russian government. The voyage of Capt. Cook, having made known the great value of the fur trade, the Spaniards, who had been for many years in undisputed possession of California, determined to obtain a convenient settlement upon the coast in order to secure a monopoly of this valuable article of commerce. Accordingly, the court of Madrid sent Martinez in 1789, to make a settlement in Nootka Sound, where he had anchored in a former voyage in 1774. We find mention made in la Perouse of a certain V. Vassadre y Vega, who was ordered, in 1786, to proceed from the coast of California to Canton, in order to make a treaty with the Chinese for the sale of the sea otter. This sufficiently proves, that the Spaniards had the project of a settlement for some time in contemplation. Martinez, on his arriving in the sound, found there Capt. Meares, established in a small fort, defended by a three pound gun, and the English flag flying upon it,—two American vessels, one English and one Portuguese. Meares had been sent to Nootka by means of a subscription, raised by Sir John Malcolm and other gentlemen for commercial purposes. Martinez immediately took down the English flag, hoisted the Spanish and seized the Portuguese vessel, the English and a second English that arrived two months after. The pretext in his instructions, for these acts of violence, was, "*that all the lands, comprised between Cape Horn and the 60th degree of north latitude belonged to his Catholic Majesty.*"

These proceedings awakened great indignation in England, and Mr. Pitt declared in the House of Commons, "that British subjects had been interrupted in a trade, which they



had carried on for years and in parts of America, where they had an incontrovertible right of trading, and in places, to which no country could claim an exclusive right of commerce and navigation. The claim of Spain was the most absurd and exorbitant, that could well be imagined, a claim, which they had never heard of before, indefinite in its extent, which originated in no treaty, nor formal establishment of a colony, nor rested on any one of those grounds, on which claims of sovereignty, commerce and navigation usually rested."

Upon this occasion the English government behaved with firmness and decision. But no war took place, though, as a great writer has said, a few sheds built upon a desolate coast in an unknown part of the world, and a few cabbages planted in an enclosure, were near producing a bloody conflict between two ancient and powerful nations. This is a pleasing turn of expression, and, apparently, founded in great accuracy; but one may remark in reference to this circumstance, that the sheds and cabbages no more produced the war than the six penny stamp act led to the American Revolution. The Count Florida Blanca and Mr. Fitzherbert signed a convention at Madrid in Oct. 1790; in consequence of which Spain restored the ships and paid 2,100,000 dollars, and "agreed, that as well in the places, which are to be restored to the British subjects, as well as in all other parts of the north western coasts of North America, or of the islands adjacent, situated to the north of the parts of the said coast, already occupied by Spain, wherever the subjects of the two powers shall have made settlements since the month of April 1789, or shall hereafter make any, *the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation.*" We recommend to the particular attention of the reader the language of Mr. Pitt, and of this article of the convention, as being especially applicable to the present case.

We have now finished the remarks, that we thought it necessary to make upon that title, which, by a singular perversity of terms, is called *discovery*, as well as upon another,

which, with equal impropriety, is denominated *occupation*. The Russians cannot possibly say, that they *discovered* the north west, and they are not even entitled to the inferior merit of having explored it. But if, hereafter, the Russian doctrine shall prevail, and this vast and valuable territory shall be vested in the nation, whose subjects first saw the land, it can, by no means, fall to the share of the imperial government, for Alexander de Humboldt has clearly proved, in the chapter already quoted, that the Spaniard Francisco Gali, in his voyage from Macao to Acapulco in 1582, discovered the north west in latitude  $57^{\circ} 30'$ . We have already mentioned the voyage of Sir Francis Drake.

We have now come to the third title, that of *possession*. We shall solicit the attention of the reader to some account of the present state of the Russian settlements on the north west, as far as the scanty materials within our reach will enable us to obtain. At the same time, this relation has a material bearing on the point in discussion, and, as we are indebted for it altogether to Russian works, the statements will be received with full faith. Every syllable, concerning the company, is extracted, either from the work of Langerdorff, aulic counsellor to his Majesty the Emperor of Russia, or from the voyage of Krusenstern, captain of the imperial navy and commander of the first expedition, sent round the world by the Russian government. This voyage took place in the years 1803, 4, 5 and 6. ✓

Towards the close of the last century, the Russians had no permanent settlement on the continent, but in 1799 M. de Baranoff, who was well known to Vancouvre, set out from Kodiak to found an establishment, we believe, in Norfolk Sound. We suppose such was his intention, because the Russian hunters had not penetrated beyond that point, but we have no positive authority for that opinion. Most people, indeed, would suppose from the state of navigation at that time amongst the Russians on the north west, that Baranoff did not possess the means of determining upon any particular spot, but would have been glad to run his vessel into the first smooth water and fair and promising harbour.

We shall not, however, deal in guesses, opinions or assertions, but proceed at once to a fact, which will astonish the reader, and do more to unsettle the faith of the credulous in the credibility of Russian discoveries than a folio of investigations. These arctic argonauts fell in with an American vessel, that happened, at the time, to be on the coast, and as the weather was foggy, the Russian hailed to know, where they were. They told the Americans, they had *not a man on board, who could take an observation*. Here was the superintendent of the Russian embassy, a man who had been on the coast nearly a score of years, doubtless, in possession of all the maps and charts, which Russian navigators and academicians had compiled since 1741, setting sail, fifty-eight years after the Russians had discovered the continent, from their principal establishment, with 68 or 70 men on board his vessel, to found a colony,—and he had not a single man in his ship, who understood the simple and indispensable art of ascertaining the latitude. It is true, this is no absolute evidence against his predecessors, but is there any probability that Russians, fifty years ago, could discover and determine much, when the principal person in those parts of the world in 1799, was not in a condition to ascertain any thing. Von Baranoff is a good and respectable man, and he has been exceeding ill used by the company. We quote from Langsdorff: “For several years he remained in this miserable part of the world, almost entirely neglected, without receiving any support or intelligence from the company. Pursued by hunger and thirst, he and his companions had sometimes no other resource than to live on sea dogs, fish and muscles. *Sometimes, by the unexpected arrival of a ship from the United States, his most pressing necessities were relieved.*”

At last, Von Baranoff reached the Sound with his Aleutians and Promuschleniks,—built a fort and warehouses and gave presents to the Kaluschians. While Nanok (as they call Baranoff) remained there, the natives were quiet and peaceable, but, in about three years, they fell upon the settlement and massacred all the Russians and many of the isl-

anders. Again, in 1804, Von Baranoff founded another colony at the same place, now called Sitcha, or New Archangel.

Langsdorff, in the suite of the chamberlain Von Resanoff, passed the winter of 1805-6 there. The colony was then in the most deplorable state from the want of food, and, we have no doubt, would have perished from disease and hunger, but for the timely purchase of the American ship Juno, containing a great variety and quantity of provisions. In relation to this settlement, we shall extract a short passage from that writer to show what the Russians, themselves, thought, at that time, of boundaries. "It is probable, that Russia neither can, or ever will establish a claim to the islands, lying south of Norfolk Sound and Cape Tschirikoff." We shall quote another to prove, that the principal Russians, employed by the emperor, have never regarded their right to the north west, as restricted to any particular latitude. The same argument in the mouth of an American or Englishman, would go to show that, if they were not restricted to any part, they were not entitled to any part. "We soon discovered Cape Disappointment, in latitude 46° 20', and, the favourable north west continuing, we expected soon to anchor. *Our chief, Von Resanoff, had already sketched his plans for removing the settlement from Sitcha to the Columbian river,*" &c. But a change in the wind saved a long controversy and, perhaps, a long war. We know that the Russians are quite ignorant of the nature and extent of the coast, but the last extract demonstrates, that they had no fixed and determinate notions as to their own rights and claims, because they must have known that, if by the law of nations they are entitled to the 51st degree, the Spaniards possessed an equal right to the 46th.

The Russio-American Company was established in 1799, and, in 1801, possessed a capital of 2,747,000 rubles. It was allowed, in the first instance, to establish settlements to latitude 55, but lately they have been extended to 51. They, moreover, forbid all vessels from approaching on the

high seas within one hundred Italian miles of their possessions. This unreasonable and despotic and intolerable regulation is a poor and weak imitation of an ordinance of the Spaniards, which commands all vessels to abstain from taking others within thirty leagues of their coasts. We shall not repeat again, that an imperial ukase cannot affect the rights or subvert the laws of nations. It is, however, well known, why they have fixed upon the 51st degree as their limit. The fur trade is worth nothing below that latitude.

Though we have entered into this business with more than usual detail, it never could have been expected by the United States, that an honourable and perfectly satisfactory adjustment of the controversy would either have been delayed or denied, whenever the subject could have been presented, fairly and fully, to the consideration of the Russian government. The American government relied, with confidence, on this occasion, as they have done on all others, on the sense of justice and friendly disposition of the Russian cabinet; well persuaded, that the claim, asserted in the imperial decree, already quoted, would be speedily renounced, when the matter was properly understood. After, therefore, an amicable discussion, a convention\* was concluded, in 1824,

\* " *In the name of the Most Holy and Indivisible Trinity* :--The President of the United States of America and his Majesty the emperor of all the Russias, wishing to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord, by means of the present convention, have named, as their plenipotentiaries, to this effect, to wit: The President of the United States of America, Henry Middleton, a citizen of said States, and their envoy extraordinary and minister plenipotentiary near his Imperial Majesty: and his Majesty the emperor of all the Russias, his beloved and faithful Charles Robert, Count of Nesselrode, actual privy counsellor, member of the council of state, secretary of state directing the administration of foreign affairs, actual chamberlain, knight of the order of St. Alexander Nevsky, grand cross of the order of St. Wladimir of the first class, knight of that of the white eagle of Poland, grand cross of the order of St. Stephen of Hungary, knight of the orders of the Holy Ghost and of St. Michael, and grand cross of the legion of honour of France, knight grand cross of the orders of the

at St. Petersburg, by which this business was regulated in a manner altogether satisfactory to the United States.

black and of the red eagle of Prussia, of the annunciation of Sardinia, of Charles III. of Spain, of St. Ferdinand and of Merit of Naples, of the elephant of Denmark, of the polar star of Sweden, of the crown of Wirtemberg, of the Guelphs of Hanover, of the Belgic lion, of Fidelity of Baden, and of St. Constantine of Parma; and Pierre de Poletica, actual counsellor of state, knight of the order of St. Anne of the first class, and grand cross of the order of St. Wladimir of the second; who, after having exchanged their full powers, found in good and due form, have agreed upon, and signed the following stipulations:

"ART. 1. It is agreed, that in any part of the Great Ocean, commonly called the Pacific Ocean, or south sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles:

"ART. 2. With the view of preventing the rights of navigation and of fishing, exercised upon the great ocean by the citizens and subjects of the high contracting powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the North West Coast.

"ART. 3. It is moreover agreed, that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said states, any establishment upon the Northwest coast of America, nor in any of the islands adjacent, to the north of fifty-four degrees and forty minutes of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

"ART. 4. It is nevertheless, understood, that, during a term of ten years, counting from the signature of the present convention, the ships of both powers, or which belong to their citizens or subjects, respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbours and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

This is the only treaty of any kind we have entered into with Russia, though, for more than thirty years, we have had a great commercial intercourse with that country, and since 1809 a continued diplomatic one of the most harmonious and agreeable sort. On two important occasions, Russia has performed, with a gratifying readiness, the valuable office of mediator in our controversies with England. The situation of the Emperor is so entirely independent and his power is so very great, that both the United States and England may submit their controversies to his judgment, in the full confidence of an impartial and disinterested decision. We have here only to add, that the ministers to Russia, since the close of the war, were, James A. Bayard, of Delaware, appointed February 1815; William Pinkney, of Maryland, April of the same year; George W. Campbell, of Tennessee, April 1819; and, the actual resident, Henry Middleton, of South

“ART. 5. All spirituous liquors, fire arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article; and the two powers engage, reciprocally, neither to sell, or suffer them to be sold to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced in any case, to authorize either search or detention of the vessels, seizure of the merchandise, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the high contracting powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this article, by their respective citizens or subjects.

“ART. 6. When this convention shall have been duly ratified by the President of the United States, with the advice and consent of the senate on the one part, and on the other by his Majesty the emperor of all the Russias, the ratification shall be exchanged at Washington in the space of ten months from the date below, or sooner, if possible. In faith whereof, the respective plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

“Done at St. Petersburg, the 17th (5th) April, of the year of Grace one thousand eight hundred and twenty-four.”

Carolina, appointed in April of the next year ;—all with the designation of envoy extraordinary and minister plenipotentiary. On the other hand, Russia has been represented in this country by Andrew de Daschkoff, accredited in 1815, Pierre de Poletica in 1819, the Baron de Tyull in 1823, the Baron de Maltitz, a chargé, and, at the present time, by the Baron Krudener. With the exception mentioned, these ministers have held the highest rank of diplomatic agents, sent to this country by the powers of Europe.



## CHAPTER XII.

## COLONIAL TRADE WITH GREAT BRITAIN.

*Two opportunities to regulate this trade passed by—In 1794 and 1825—Right to trade not a natural one—Depends on conventional law—True distinction—Since 1783 subject of negotiation as well as of intercourse—Constitutes right on part of the United States to negotiate for it—Amount of the trade in different years—Valuable for manner in which it is conducted—Excellent nursery for seamen—History of negotiations with England—United States have rejected all propositions in expectation of acquiring the whole trade—No indication that England will yield this ground—Acts of the American and English governments—Practical effects of the system—Mr. King sent to London—No instructions—is succeeded by Mr. Gallatin—The English proposition of 1825 withdrawn, and intimation given, that farther negotiation would be declined—Trade remains in same state to present hour—Examination of ground assumed by England.*

THIS government appears to have suffered two opportunities to have passed by for making a tolerably permanent and, in some respects, advantageous arrangement, relative to a trade with the British West Indies. The first was, in rejecting that part of the 12th article of the London treaty of 1794, that allowed an intercourse in vessels, not exceeding seventy tons burthen, a condition wearing an invidious air, but, in reality, the size specified, was one, our merchants, engaged in the traffic, would have selected;—and the other, in declining to accept the proposition of the British government of July 1825. Both these opportunities seem to have been disregarded, not from want of skill in conducting the negotiation, but from an impression entertained by the senate in one case, and the cabinet in the other, that, by the steady rejection of subordinate terms, the trade with the co-

lonies could eventually be established on the same footing in every particular, as with the mother country.

Some reliance has been placed on the argument, that the United States have an original claim, a natural right to the commerce of the European possessions in the West India seas. This opinion, generally received and deep seated just after the peace with England, was a principal cause of the unpopularity of Mr. Jay's treaty, particularly in the northern and eastern states. The natural freedom of commerce,—the fitness of man for society, and a right, proceeding from that circumstance, to trade and to exchange the produce of one country against that of another, are, certainly, phrases very acceptable to the ear ; but it is extremely difficult to define their meaning. Society may be a very simple machine, (as Lord Bolingbroke said of man, it has but one moving, constituent part,—self-interest) but this only applies to the principle of the engine ; in itself, complicated, full of regulating actions, checks, stops and balance wheels. These appear to increase as nations become more refined and accomplished, and, as man was obviously intended for improvement, his natural condition is evidently that, most removed from a savage state. We know of no country, where the natural freedom of commerce (to use that expression in its popular sense) does not diminish with the progress of society ;—all adopt navigation laws, protecting or prohibitory duties, bounties and a variety of artificial arrangements to make their systems mutually and exactly correspond. We are aware, it is a nice art to adjust the proportions either of protection, prohibition, or bounty ; and in this, after all, consists the whole excellence of an administration of affairs in time of peace. As to the particular subject of the colonial trade, a proper and satisfactory view of it was presented by Mr. Gallatin in a letter of September 22, 1826, to Mr. Canning, and, as we do not recollect, that a similar developement, to the same extent, has ever before been made by an American statesman, we shall extract his observations relative to it.

“ Great Britain asserts, as clear and undoubted, the right to give to the United States, or to withhold from them, the privilege of

trading with the West India colonies, to reserve to herself that trade, and generally to open the ports of those colonies to foreign powers, or to keep them closed, as may suit her own convenience, wholly or partially, unconditionally or conditionally, and, if conditionally, on what conditions she pleases.

“As an abstract and general proposition the right is not denied; but considered purely as a matter of right, this, which is an attribute of sovereignty applies to all other territories as well as to colonies.

“Every nation has the abstract right, generally and not in reference to her colonies alone, to close or to open her ports to foreign vessels or merchandise, and to grant the indulgence wholly or partially, conditionally or unconditionally. This right has been, and continues to be exercised occasionally by every nation in the shape of navigation, prohibitory and restrictive laws, operating unequally on different nations.

“The real distinction between the trade of foreigners with colonies, and that with other territories, seems to consist, not in a greater or less complete right, but in a difference in the usage and practice. That an exclusive monopoly of the colonial trade was not the best mode of preserving colonies, or of promoting their prosperity, is a recent discovery. But since the late final separation of the greater part of the continent of America from the mother countries, and now that more enlightened views prevail, as respects the remaining colonies, the former peculiar character of the colonial trade is almost lost. The abstract right being the same, and the ancient system of colonial policy having been nearly abandoned, it is difficult to perceive any striking difference between the trade with the colonies, and that with the mother country.”

The remark the American envoy makes in regard to the practice of European nations, in regulating their colonial policy, contains the whole distinction between the abstract right to forbid intercourse, by no means denied, and a right in the foreigner to treat for it on certain terms, created by the modern usages of those nations. It is precisely on this ground the United States claim a right to negotiate with England respecting this trade. America, for example, claims equal rights in transporting her own commodities to the West

Indies with British vessels, not the same right in transporting British articles in British vessels. Since the peace of 1783, it has been a subject of negotiation, not, we acknowledge, like the trade between the United States and the mother country, for the discussion has been subject to certain restrictions or forms, peculiar to the business;—it has never been embraced in the general matter of the commerce of the two countries; but both parties by their practice, have admitted, that it was entitled to the privilege of a separate examination. Allowing, therefore, on the one hand, that a discussion of the West India trade is not necessarily associated with that of the mother country, it is, on the other, undeniable, that, if England had maintained, in regard to her colonies, the iron bound, case hardened monopoly of Spain, the United States would probably have abstained from presenting the topic for negotiation.

In order to make good the remark that the practice of England fully authorizes a proposal to negotiate, and that the distinction, Mr. Gallatin has adverted to, is not fanciful, we shall give a brief sketch of the proceedings of that government on this subject. In the first place, we have the bill, denominated the American intercourse bill, introduced in March 1783, into the House of Commons by Mr. Pitt, allowing a full freedom of trade *to all the British colonies and possessions in North America*. This bill fell with the administration of which Mr. Pitt was chancellor of the exchequer, though, we have no idea, it would have been passed by Parliament; and even in its first stage was vehemently opposed, particularly, as already stated, by Mr. Eden, from whose speech we have, in a former chapter, made some extracts, being in some degree prophetic, and as really expressing, at that early hour, the views, which have always governed the British cabinet.

Then we have the 12th article of Mr. Jay's treaty, inserted in direct opposition to the opinion of the committee of the Privy Council for trade and plantations, delivered in January 1791, and which is in these words :

“ If Congress should propose, (as they certainly will) that this  
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principle of equality should be extended to *the ports of our colonies and islands*, and that the ships of the United States should be *there* treated as British ships, it should be answered, that this demand *cannot be admitted*, even as a subject of negotiation; by the public law of Europe every nation has a right to regulate the commerce, which it carries on with its own colonies, in the manner that shall appear to be the most conducive to the interest of the mother country:—in regulations of this sort *no foreign government has any right to interfere*;—this branch of freight is of the same nature with the freight from one American state to another; Congress has made regulations to confine the freight, employed between different states, to the ships of the United States; and Great Britain does not object to this restriction. The United States, at present, enjoy all the rights and privileges of an independent nation, and, as such, *they now have no pretence to claim the privileges*, which they once enjoyed as British colonies.”

Again, the discussion of this trade was introduced into the negotiations, that led to the unratified treaty of 1806, and to the conventions of 1815 and 1818. And in all these cases, an arrangement failed, not because England declined negotiation, but because the United States insisted on a basis of perfect reciprocity. If to this detail be added the conferences, held at great length by Mr. Rush in 1824, with the British plenipotentiaries, it follows, that, during thirty years, a continued negotiation has been maintained between the two countries on the subject of the West India trade, a period sufficiently prolonged to establish a right to treat for that trade on terms, at least, of some sort of equality. So little has the practice of the British government, in regard to negotiation, coincided with the theory of its colonial monopoly! Neither is the remark well founded, that the relaxations of the system have taken place in consequence of a pressure, caused by the wars in Europe;—they, together with the negotiations, have been continued since the peace. Ten years after the termination of the war, Great Britain voluntarily made the most favourable propositions on this subject, that have yet proceeded from that cabinet. And it may, also, be added, that the direct intercourse, allowed with the islands, is not less a departure from the system.

"As early as 1783, the government of Great Britain, deviating from that principle of the colonial system, according to which her colonies were prohibited from trading directly with any other country, allowed her West India colonies to trade directly with the United States of America in British vessels. This permission had been continued, almost without any interruption, till the year 1822, when a more extensive change in the colonial policy superseded that partial measure. And during the European war, Great Britain found it convenient (not) occasionally, but repeatedly, to open her West India ports to American vessels; at the same time, that she was asserting the principle, denied by the United States, that a neutral was not authorized by the laws of nations to carry on, in time of war, a trade with a colony, in which he was not permitted to participate in time of peace.\*

\* This trade has, also, been very considerable in amount, for in one year (1801) the amount of the exports from this country exceeded 9,000,000 dollars, and that of the imports exceeded 6,000,000 during several years.

"*British West Indies and North American Colonies.*—The value of imports from the British West Indies to the United States, in the year ending September 30, 1824, was \$2,758,067, of which \$2,370,225 were in vessels of the United States, and \$387,842 in those of Great Britain. The value of imports in the year ending September 30, 1825, was \$2,437,122, viz. in American vessels \$2,097,657, and in British vessels \$339,465.

"The value of imports from the British American colonies, in the year ending September 30, 1824, was \$705,931, of which \$15,834 were in foreign vessels.—The value in 1825, was \$610,788, of which \$23,410 were in foreign vessels.

"The value of exports to the British West Indies in the year first above named, was \$1,750,703, of which \$119,180 were in foreign vessels. The value of exports to those colonies in 1825, was \$1,635,574, of which \$120,186 were in foreign vessels. The value of exports to the British North American Colonies in 1824, was \$1,773,107, of which \$63,925 were in foreign vessels, and in 1825, the whole value was \$2,533,224, of which \$102,255 was in foreign vessels.

"The aggregate amount of imports from the British West India and North American Colonies in 1824, was \$3,463,998, of which \$1,125,042 were in gold and silver coin. The amount in 1825 was \$3,047,910, of which \$844,002 were in specie.

"The following were the principal articles of import from the Brit-

Till 1806 the ports of the islands were opened by proclamation from the governors, but, since that period, it has been done by an order of the king in council. Negotiation

ish West Indies in the years above named, with the amount in value, of each article, as given in the custom house returns, viz.

|                                 | 1824.     | 1825.     |
|---------------------------------|-----------|-----------|
| Gold and Silver Coin, . . . . . | \$826,199 | \$625,106 |
| Rum, . . . . .                  | 511,648   | 367,897   |
| Molasses, . . . . .             | 487,401   | 489,655   |
| Coffee, . . . . .               | 259,540   | 243,040   |
| Cocoa, . . . . .                | 5,575     | 74,535    |
| Sugar, . . . . .                | 278,137   | 158,127   |
| Pimento, . . . . .              | 406,550   | 163,671   |
| All other articles, . . . . .   | 283,017   | 315,091   |

"The amount of duties accruing to the United States per annum, on the import of the above enumerated articles, taking the average quantity imported in the two years, was as follows:

|                                           |           |
|-------------------------------------------|-----------|
| Rum, at an average of 43 cents, . . . . . | \$536,181 |
| Molasses, at 5 cents per gal. . . . .     | 112,730   |
| Coffee, at 5 cents per lb. . . . .        | 100,002   |
| Cocoa, at 2 cents, . . . . .              | 9,870     |
| Sugar, at 3 1-2 cents per lb. . . . .     | 133,664   |
| Pimento, at 6 cents per lb. . . . .       | 61,188    |
|                                           | <hr/>     |
|                                           | \$953,635 |

"The amount in value of the principal articles imported from the British North American Colonies, was as follows:

|                             | 1824.     | 1825.     |
|-----------------------------|-----------|-----------|
| Specie, . . . . .           | \$298,843 | \$218,896 |
| Rum, . . . . .              | 54,881    | 23,801    |
| Molasses, . . . . .         | 25,298    | 23,025    |
| Coffee, . . . . .           | 5,879     | 365       |
| Sugar, . . . . .            | 5,876     | 4,147     |
| Coal, . . . . .             | 8,120     | 16,911    |
| Plaster of Paris, . . . . . | 56,859    | 94,611    |
| Furs, . . . . .             | 93,357    | 70,031    |

"The principal articles of export to the British West India and American Colonies were the following, of which we give the custom house value, viz. in the year ending September 30, 1824:

|                                | W. Indies. | N. A. Col. |
|--------------------------------|------------|------------|
| Lumber of all kinds, . . . . . | \$446,823  | \$110,055  |

and commercial intercourse, continued for thirty years, form, therefore, the foundation, upon which the United States contend that the rules of the ancient colonial system no longer apply in strictness to the British West Indies.

|                                           | <i>W. Indies.</i> | <i>N. A. Col.</i> |
|-------------------------------------------|-------------------|-------------------|
| Beef, tallow, hides and cattle, . . . . . | \$26,343          | \$62,862          |
| Butter and cheese, . . . . .              | 200               | 25,578            |
| Pork, hams, lard and hogs, . . . . .      | 5,631             | 203,286           |
| Horses and mules, . . . . .               | 83,611            | 21,285            |
| Flour, 155,915 bbls. . . . .              | 687,437           | 181,444           |
| Indian corn, . . . . .                    | 80,392            | 58,454            |
| Indian meal, . . . . .                    | 129,084           | 41,395            |
| Rye meal, . . . . .                       | 9,097             | 46,185            |
| Rye, oats, &c. . . . .                    | 17,007            | 7,078             |
| Bread and biscuit, . . . . .              | 64,393            | 5,103             |
| Potatoes, . . . . .                       | 4,413             | 1,186             |
| Apples, . . . . .                         | 2,637             | 8,349             |
| Rice, . . . . .                           | 94,155            | 19,301            |
| Leather, boots and shoes, . . . . .       | 1,402             | 110,562           |
| Ashes, . . . . .                          | -                 | 625,928           |

"The amount exported to those colonies of the same articles in 1825, was as follows, viz. :

|                                           | <i>W. Indies.</i> | <i>N. A. Col.</i> |
|-------------------------------------------|-------------------|-------------------|
| Lumber, . . . . .                         | \$413,380         | \$67,399          |
| Beef, tallow, hides and cattle, . . . . . | 35,568            | 132,635           |
| Butter and cheese, . . . . .              | 1,714             | 47,016            |
| Pork, hams, &c. . . . .                   | 11,529            | 382,583           |
| Horses and mules, . . . . .               | 113,445           | 36,178            |
| Flour, 142,406 bbls. . . . .              | 569,368           | 177,974           |
| Indian corn, . . . . .                    | 83,737            | 41,676            |
| Indian meal, . . . . .                    | 133,072           | 24,457            |
| Rye meal, . . . . .                       | 7,014             | 33,406            |
| Rye, oats, &c. . . . .                    | 15,566            | 9,315             |
| Bread and biscuit, . . . . .              | 61,392            | 5,921             |
| Apples, . . . . .                         | 3,191             | 9,486             |
| Rice, . . . . .                           | 82,624            | 18,475            |
| Leather, boots and shoes, . . . . .       | 2,700             | 126,537           |
| Nonenumerated manufactures, . . . . .     | 5,259             | 120,374           |
| Ashes, . . . . .                          | -                 | 1,115,376         |

"The amount of exports of lumber, to the British West Indies, in the two years above named was much greater than to any other coun-



The reader will observe, this trade has amounted to about one-fifth of our whole annual exports ; a large amount in itself, but the materials that compose, and the manner in which it is conducted, give it, perhaps, its greatest value. The cargoes are assorted, consist altogether of domestic productions, prepared in many cases solely for the West India markets, and, in that way, actually creating employment ;—the vessels are small and manned, for the most part, with native born seamen, inhabitants of the districts, where the lumber and other articles, that compose the cargoes, are procured. The men brought up in this navigation, have no superiors as seamen ;—the West India traders and fishing vessels being properly the schools as well as nurseries of our sailors. The greatest value of the trade consists, therefore, in training this race of men for the sea, and giving employment to numbers of persons on shore in obtaining and collecting the cargoes, into which scarcely any capital enters, but the labour of the individuals.

The commercial convention, concluded in 1815 with England, is properly the commencement of the difficulties, we have had with that country respecting the West Indies. By the operation (probably not foreseen by the United States) of that instrument, Great Britain obtained a commercial advantage, at which she has been aiming since at least, the

try. The amount of flour exported to the British West Indies in 1825, was greater than to any other country except Brazil, and in the preceding year greater than to any other country except Brazil and Spanish South America, which in the returns of that year was all included under one head.

“The only articles prohibited to be imported into the British North American colonies, from this country, under the late act of Parliament for regulating the trade of the British possessions in America and the West Indies, are gunpowder, arms, ammunition, utensils of war, dried and salted fish, salted beef, pork and bacon, whale oil, blubber and fins, copyright books, counterfeit coin, and the produce of places within the East India Company’s charter. The articles prohibited to be imported into the British West India and South American colonies, are those above named, together with coffee, cocoa, nuts, sugar, molasses and rum of foreign production.”

year 1784,\* and of which she for a short time had the benefit in 1791. It is this;—that convention regulated the trade between the United States and the British dominions in Europe, and was silent in regard to the West Indies;—the British vessel had, therefore, the advantage of coming with a cargo of manufactures to a port in the United States, discharge,—take a cargo of naval stores for the West Indies,—there discharge, and thence take a cargo of sugar, &c. for Europe;—or go first to the West Indies,—thence bring sugar, &c. to the United States,—and thence carry cotton, rice, &c. to Europe. The American vessel was confined to a direct voyage. This became a great evil, and inflicted a deep wound on our navigation.

“By the operation of this convention, and the ordinary navigation laws of Great Britain, the United States were, in effect, excluded from all participation of the British West India trade, and British vessels became the sole carriers of the production of the American soil to colonies, to whose prosperity, if not existence, these productions were indispensable.

“A condition, so unequal, demanded the interposition of our government. Successive, but fruitless appeals were made to the interest of Great Britain, and the most favourable terms, which could be obtained, so late as March 1817, were a proposition to extend to the United States the Free Port Act, allowing the importation of certain enumerated articles, into certain enumerated ports in vessels of *one deck*; to authorize a restricted admission of our vessels into Bermudas and Turks Island, and to connect with these an article, regulating the intercourse between the United States and the British territories, adjoining them. After mature deliberation this proposition was declined by our government.†

\* In 1784, the committee of council remark, “the owners of British vessels, concerned in the West India trade, have long laboured under great disadvantage from the difficulty of procuring outward freight for their vessels, but that by going first to North America,” &c.

† “The third section of the act of 1822 provided, that it should be lawful to import into any of the colonial ports enumerated in a schedule, annexed to the act, ‘from any foreign country on the continent of North or South America, or from any foreign islands in the West

"Negotiation, having failed in procuring any favourable relaxation of the colonial system of Great Britain, Congress deemed it

Indies, whether such country or island, as aforesaid, shall be under the dominion of any foreign European Sovereign or State, or otherwise, the articles enumerated in the schedule, annexed to the act, either in British built vessels or ships, or in ships or vessels, owned by the inhabitants of any country, or place belonging to, or under the dominion of the Sovereign, or State, of which the said articles were the growth, produce, or manufacture, such ships or vessels being navigated with a master and three-fourths of the mariners, at least, belonging to such country or place; provided that no articles, enumerated in the said schedule, be imported in any foreign ship or vessel, unless shipped or brought directly from the country, of which they are the growth, produce, or manufacture.' It, thus, permitted vessels, belonging to the United States, and to the governments of South America, to import into the British islands, in the West Indies, certain articles enumerated. There is a difference between the acts of 1822 and 1825; in the former those articles only are enumerated, which are admitted, in the latter those only are enumerated, which are not admitted, and the latter act may be held to authorize the admission of all articles, not enumerated. The act provides, also, for the exportation of articles from the West Indies directly to the countries of North and South America. It enacted that it should be lawful "to export in any British built ship or vessel, or in any foreign built ship or vessel, from any of the ports, enumerated in the schedule, annexed to the act, any article of the growth, produce, or manufacture of any of his Majesty's dominions, or any article, legally imported into those ports; provided that the articles, when exported in any such foreign ship, or vessel, should be exported *direct* to the State or country in America or the West Indies, to which such ship or vessel might belong, and before the shipment thereof, security by *bond* be given to his Majesty for the due landing the said articles at the port or ports, for which entered."

"In the year 1825, that government again turned its attention to the colonial trade, and the negotiation not having been broken off, on the 27th of June passed, what is commonly called, the Colonial Ware House Act. This act extended the ware house system, previously adopted in England, to certain free ports in the colonies. It furnishes evidence of the profound views and extensive foresight of those, who conduct the British councils. The leading object of that act was the extension of British navigation and commerce. Not satisfied with making Great Britain the mart of all the Eastern continent, this act aims at extending the same privileges and advantages to certain of her

necessary to enforce, by countervailing legislative enactments, a just participation in the trade, and in 1818, an act was passed, by

ports on the western continent. The second section of the colonial warehouse act, made it 'lawful to import into any of the free ports' in the colonies, 'except in Newfoundland, any goods from any foreign place in America, or in Europe, or Asia within the Mediterranean sea, and from any place in Africa, provided such importations be made in British ships, or in ships of the country, of which the goods were the produce,' but that 'the importation of gunpowder, arms and ammunition and utensils of war, dried or salted fish, salted beef, pork or whale oil, blubber or fins,' should not be permitted.

"Kingston in Jamaica, Halifax in Nova Scotia and many other important colonial ports are, by this act, declared free ports, into which merchandise of all descriptions is allowed to be introduced, and from the free ports in the West Indies a trade is opened with all the South American states. Those states already consume a vast amount of British manufactures, and the operation and evident intention of that act is, still, further to facilitate their introduction throughout the extended regions of the south. At the same session of parliament on the 5th of July 1825, a few days after the passage of the warehouse act, a new navigation act was passed to simplify the system, as it previously existed. The 4th section of the new navigation act provides, "that goods, the produce of Asia, Africa and America, shall not be imported into the United Kingdom to be used therein, in foreign ships, unless they be the ships of the country of Asia, Africa or America, of which the goods are the produce, and from which they are imported." The same act secures exclusively to British navigation the coasting trade of Great Britain, and the trade between her respective colonies and the mother country, and the trade between the colonies themselves.

"This act in its principles is not essentially different from the old navigation act passed in the time of Charles II. except that it does not confine the commerce with Asia, Africa and America to British navigation, allowing the vessels of each country to import into Great Britain the produce of such country, and that it contains no particular provision with regard to Holland, she being now no longer dangerous as a naval power. No express provision is discovered in this act, to allow foreign vessels to trade with her colonies. It is, however, true that the act, to regulate the trade to the British colonies, 6 Geo. IV. ch. 114, does refer to the navigation act, as allowing such liberty; but, after a careful examination, I find in it no provision, expressly estab-

which the ports of the United States were closed against British vessels, coming from colonial ports, which, by the ordinary laws of navigation, were closed against vessels of the United States. A nonintercourse in British vessels was thus established with the closed ports.

"Soon after the passing of this act, an opportunity again occurred of presenting this subject to the attention of the British government in the negotiation for the renewal of the commercial convention of 1815. But although propositions were exchanged by the respective governments, the terms still offered by Great Britain, were such as our government deemed it proper to accept, and in May 1820 an act was passed supplementary to the navigation act of 1818, closing the ports of the United States against British vessels, coming from any British colonial ports in the West Indies, Lower Canada, &c. and interdicting the landing of the productions of the United States, exported in British vessels, in the

lishing the liberal principles, it is said to contain in respect to commercial intercourse with the colonies. The 11th section of that act perhaps, be construed to allow the introduction of all goods not enumerated and expressly prohibited. Had this allowance been distinctly expressed it would have prevented, at least, some of the difficulties, which have arisen regarding the interpretation of that act, as well as the act relating specially to the colonial trade of the same date. I do not see that there is in this act any very material departure from the ancient colonial system; but in chap. 114th of that year, already mentioned, the privilege of importing into, and exporting from the colonies in foreign vessels is conditionally granted. The 4th section of this act refers to the navigation act of the same date, as having permitted foreign ships to import into any of the British possessions abroad from countries, to which they belong, goods, the produce of those countries, and to export goods from those possessions to be carried to any foreign country whatever, and provides, 'that the privilege, thereby granted to foreign ships, shall be limited to the ships of those countries, which, having colonial possessions, shall grant the like privilege of trading with those possessions to British ships, or which, not having colonial possessions, shall place the commerce and navigation of Great Britain and its possessions abroad on the footing of the most favoured nation; unless his majesty, by his order in council shall in any case deem it expedient to grant the whole or any of such privileges to the ships of any foreign country, although the conditions, aforesaid, shall not in all respects be fulfilled by such foreign country.'

prohibited places, as well as the introduction into the United States of the goods, wares and merchandise of these colonies, except wholly of the growth or produce of the colony, whence laden and whence directly imported.

"To prevent, or mitigate the effect of these measures upon the trade and prosperity of the colonies, partial relaxations of her colonial system were, at times, permitted by Great Britain. But these temporary relaxations were not of a character to justify the abandonment of the ground, which we had taken. To evince, however, our willingness to terminate a system of exclusion and prohibition, which could only be injurious to both parties, Congress, by act of 6th May 1822, authorized the President, on being satisfied that the British West India islands or colonies were open to the vessels of the United States, to open the ports of the United States to the vessels of Great Britain under such 'reciprocal rules and restrictions,' as the President might make and publish.

"The act of parliament of the 24 June 1822, followed. By this act Great Britain opened the colonial ports, therein designated, to the admission of certain enumerated articles, *direct* from the producing country; and authorized the exportation of any article of the growth, produce or manufacture of the British dominions, or any article, legally imported into the said ports (arms and naval stores excepted) on the condition, that they should in foreign ships be exportable only direct to the country, to which the vessel belonged. The 15th section empowers the king to prohibit trade and intercourse with any country, or island in America, or the West Indies, if it should appear, that the privileges, granted by the act to foreign ships and vessels, were not allowed to British vessels.

"The anticipated contingency having arrived, which required the exercise of the power, with which the President had been intrusted by the act of Congress of May 1822, he issued his proclamation in August 1822, declaring the ports of the United States to be open to British vessels, under such rules and restrictions as were reciprocal. The discriminating duties between American and foreign vessels were not rescinded by the proclamation. Of this the British government complained, alleging that similar privileges were not conferred by the proclamation on British vessels, as had been conferred on American vessels by the act of parliament. On the other hand, it was contended by our government,

that the privileges, granted to British vessels, were more favourable than those conferred on American vessels, engaged in the same trade, on the assumption, that our discriminating duties were to be continued. This question gave rise to an extended correspondence between the appropriate public functionaries of the two governments."

"The objections, urged by our government to the provisions of the act of Parliament of June 1822, and relied on as a justification for the refusal to discontinue the discriminating duties, were the following. First, that the colonial produce, exported in American vessels, was subjected to an export duty, to which it was not liable, if exported in British vessels. Secondly, that, whilst all the ports of the United States were open to British vessels, certain enumerated ports, only, of the British colonies were open to the vessels of the United States. Thirdly, that American vessels were confined to a *direct* trade between the place of export and the place of import, whilst British vessels were not liable to the same restrictions. Fourthly, that the British vessels, though confined in a direct trade to the same enumerated articles as the American, were not so confined in trading from colony to colony, or with the ports of the mother country. Fifthly, that, whilst all articles of British colonial produce are admitted into the United States, many important articles of American produce were excluded from the British West Indies. And sixthly, that higher import duties were imposed in the colonies upon the articles of American produce than on the like articles, produced in the dominions of Great Britain.

"It is not to be controverted that, if our government are warranted in the facts, upon which these objections are founded, they could not have yielded to the terms, insisted on by Great Britain without an abandonment of the essential interests of the country. In opposition to these views it was contended by the British government: First, that the export duty complained of was a duty of four and a half per centum, levied in some of the leeward islands on the produce of those islands, whether exported in British or *American* vessels, and equally whether exported to Great Britain, or foreign countries. Secondly, that the colonial ports, opened to American vessels, were all those, in which custom house offices had been established. Thirdly, that we had passed an act confining British vessels to a direct trade under bond in the same manner

as American vessels were restricted by the British act of Parliament and to a greater degree. Fourthly, that the privilege of trading between colony and colony, as well as with the mother country, enjoyed exclusively by British vessels, was only a part of the coasting trade, which every government secures to its own citizens or subjects. Fifthly, that, the exclusion from the West India markets of certain articles of American produce, was no other than what already existed in the trade between the United States and Great Britain and other countries, and that it was not confined to colonial intercourse. And lastly, that the protecting duties, levied in the West Indies on the productions of the United States, were necessary to equalize the advantages of climate and vicinity, enjoyed by our citizens, and to enable the inhabitants of the continental colonies to dispose of their productions."

—"Although Great Britain still alleged the inequality of the privileges, enjoyed by British vessels in American ports, the power to prohibit intercourse with the West India islands in pursuance of the act of Parliament of June 1822, remained for some time unexercised. On the 1st of March 1823, Congress passed an act, suspending the nonintercourse acts of 1818 and 1820, and opening our ports to British vessels, engaged in the colonial trade on certain specified conditions. One of the conditions was, that if the President should receive satisfactory evidence, that no higher or other duties were imposed in the British colonial ports upon American vessels or cargoes than upon British vessels and upon their cargoes, imported from *elsewhere* into the same, to discontinue discriminating or alien duties in favour of British vessels. This act was in accordance with the ground, maintained by our government in their correspondence with Great Britain since the year 1817. It adopts the principle, that the reciprocity of *burdens* and *exemptions* should extend to the *cargo*, as well as to the vessel, and claims for our produce, imported into the British colonies, the privileges, allowed to the produce of the mother country, or its colonies. This claim was resisted by Great Britain, as wholly inadmissible, and in the same year an order in council was enforced, imposing countervailing duties on American vessels, arriving at their colonial possessions of precisely equal amount to those, imposed in our ports upon British vessels, arriving from the colonies."

As Great Britain in 1822 had receded voluntarily from



some portion of her colonial supremacy, Congress probably supposed, that the object, for which this country has been contending since 1794, could, by the exercise of more steadiness and perseverance, be finally accomplished. In the instructions given to Mr. Rush for the negotiation of 1824, that minister was, accordingly, directed to insist, as an indispensable condition, upon the admission of our productions to the West India islands on the same terms, as those of the mother country. The differences between the two governments were reduced to a single point, and their claims were, respectively, maintained with spirit and ability. But on the one hand, the American minister was limited by his instructions, and, on the other, the British plenipotentiaries asserted a right, uniformly advanced, to encourage, by countervailing duties, the growth and importation of their own productions. Nothing having been effected by negotiation, recourse was again made by England to legislation, and in 1825, acts were passed opening the ports on two conditions. 1. That those countries, possessing colonies, should allow British vessels to trade with them on the same terms, on which they (the foreigner) were allowed to trade with the British colonies. 2. That those countries, possessing no colonies, should have access to British colonies on the footing of the most favoured nation, provided the trade of the colonies became entitled to equal benefits. The United States held no colonies, were yet the second commercial nation in the world, and their trade was of more value to the British possessions than that of Europe. The distinction wore an invidious look, especially when an equality of favours was granted to Denmark or Sweden, who happened to hold one or two of the subordinate West India islands. But the reason of the distinction was well known, which, it is to be feared, the British government may have learnt from the policy not hitherto attended with much success, the U. States have adopted concerning this intercourse. It was done to encourage the trade and navigation of her possessions on this continent, and to effect that object, the government applied a principle of the colonial system, which

may be consistent enough, but it certainly has a distorted and exaggerated appearance. There can be no doubt, that if the productions of the United States were once carried in our vessels to the West Indies on the same terms with those of Canada, or Nova Scotia or Ireland, the whole trade would speedily fall into the hands of the Americans.

No legislative measures were adopted to meet the act of the British Parliament of July 1825, as the Executive, still, appeared to prefer negotiation, probably believing, that an entire equality could eventually be attained. In itself the proposition of the British act was as favourable as any that had been made, and it would have led to a trade, advantageous to this country, and as it had for its basis the principle of the most favoured nation, none of the disadvantages of double freights, that existed under the convention of 1815, and those, which this government have alleged arose under the British act of 1822, would have occurred. It was of a nature to leave the United States at liberty to give such protection to their vessels, as the course of trade might require. In the spring of 1825, the Executive sent to London a statesman of great experience, who had distinguished himself on several public occasions, both of late years and in the earliest period of our diplomatic relations, in vindicating the principle of an equality of exemptions on our productions, with those of the mother country, and in showing himself a steady, determined foe of the British colonial system. The private opinions of Mr. King not only corresponded with the instructions of Mr. Rush in 1824, but it is understood, he always expressed himself with a great degree of confidence, that the necessities of the colonies would ultimately compel the mother country to allow them to seek supplies on the terms, proposed by the United States. A lamentable illness prevented this minister from entering upon any negotiation whatever, though it appears that upon the West India subject he was not furnished with instructions, a topic the most important in controversy, and upon which the minister, from his minute and profound knowledge, could be employed to most advantage. In the

summer of 1826, Mr. Gallatin arrived in London, having been appointed to succeed Mr. King, but unfortunately his negotiation was ineffectual. The act of Congress of 1823, remaining in force, Great Britain, by an order in council of July 1826, closed the ports of the West Indies against our vessels; and in that condition they remain to this day. This fact was known in this country in December, but a proclamation in conformity with the provisions of the act of March 1823, reviving the provisions of the acts of April 1813 and of May 1820 and closing the ports of the United States to British vessels from the colonies, was not issued till March 1827, so that the whole trade fell into the hands of the British between these periods. The subject, however, had been referred to the consideration of Congress.

It may be termed an unfortunate measure in the history of this business, that Mr. Gallatin was authorized to accept the terms, Mr. Rush had, by the directions of his government, rejected two years before. In 1826 the condition was abandoned, that in 1824 was presented as a *sine qua non*, a condition, which this country has never succeeded in extorting from Great Britain, though, till the embassy of Mr. Gallatin it has been adhered to with great steadiness.\*

\* The terms Mr. Gallatin was authorized to accept are explained and illustrated in the following remarks:—"We say to Great Britain, your ships shall be permitted to import the produce of your colonies into the United States, paying the same duties of impost and tonnage, as are exacted on vessels of the United States and their cargoes of like produce, with the liberty to British vessels to depart with merchandise to any other part of the world, provided you allow us like privileges in your colonial ports. If this offer be accepted, an American vessel may go to the West Indies, thence to any part of the world, except the dominions of Great Britain, and then return to the United States, having earned the freight of three voyages and the profit of two exchanges. We shall obtain, therefore, in addition to what was allowed by the act of 1822, the right to carry colonial produce from the British West Indies to any foreign country, and, in return, we allow a British vessel arriving from Liverpool at New-York, or any other port here, to take thence a cargo, such as our vessels may take, to the West Indies, paying no other duties or charges, than our own

This government having delayed for two years to take any notice of the offer of the British plenipotentiaries in 1824, having sent a minister to England without instructions

vessels pay under like circumstances. From the West Indies, such British vessel may either return to Great Britain, or carry colonial produce to Europe, or come to any port in the United States, land her cargo of colonial produce, and thence carry cotton, naval stores or any other article to Great Britain. This gives to her apparently a very enlarged privilege.

"I am aware, that many respectable merchants entertain a doubt, whether our navigation will be able to compete with the British on such terms. My own opinion is, that the experiment may be properly and safely tried. Though it is true, that a British vessel may take a cargo from Liverpool to New-York, and thence to the West Indies and to Europe, or back to the United States, making, what is called the triple voyage, it is, also, true, that freights from Liverpool to New-York have become unusually low, and are likely so to continue, by which that voyage is rendered unimportant. The exports from the United States are bulky, so that the value of one return cargo probably will be equal to four, and, in some cases, to six outward cargoes. There is, therefore, and will, doubtless, continue to be always a great competition for freight from England to the United States, and hence the price of freights will be greatly depressed. The packets which are constantly passing between New-York and Liverpool, rely for their profits in some degree upon passengers, and are, therefore, willing to take freight at a low price. British merchant vessels, which have been employed in the West India trade, will certainly be unable to compete with these packets in carrying articles of British manufacture of small bulk and great value. British vessels in England will have a fairer prospect of a profit, by taking a cargo to the West Indies than to the United States,—the freight to the latter being scarcely sufficient to pay the expense of manning and supplying the vessel during the voyage, while to the West Indies the freights are subject to no competition and of course must be adequate. British West India vessels, too, arriving in the United States to carry our produce hence to the West Indies, owing to their size, will not be able to enter the small ports, where the article, suited to the West India market, may be conveniently and advantageously obtained, and can only find entrance into a few of the larger ports. At those ports they will be compelled to purchase such articles, as may be offered, and charged with a freight from the place of production, as well as to the profit

on the subject, and suffered a year to pass by, without meeting, by any legislative enactment, the arrangement, proposed in the act of Parliament of July 1825, it cannot be matter of surprise, if, under these circumstances, the foreign government should suppose neither of its propositions was acceptable, and, having given the necessary time for their consideration, should withdraw them from public notice. This was the state of things, when Mr. Gallatin arrived in England, accompanied by an intimation, that the trade would, thereafter, cease to be matter of negotiation.

It now remains to take notice of the doctrines, asserted by Mr. Canning in a letter (September 11, 1826) to Mr. Gallatin, as being those, that will, hereafter, regulate the movements of the British government on this subject.

“It is the unquestionable right, and it has, till within these few years, been the invariable practice of countries, having colonies, to reserve to themselves the trade with those colonies, and to relax that reservation only under special circumstances and on particular occasions. When a relaxation of that nature has been dictated, and limited by the necessities of the mother country, or of the colonies, the foreign countries, taking advantage of it, may fairly aver, that they owed nothing to the state, which had granted such relaxation. They may, even, have felt themselves at liberty

of the merchant. Articles, the produce of North Carolina and other states, concerned in this trade, will not be carried to New-York or other large ports to be exported in British ships, but will find their way in our vessels directly to the West Indies. This trade must, from its peculiar character, continue to be carried on by American navigation. The British West India ships, also, are not constructed in such a manner as to permit them to carry horses and other live stock, which form important exports to the British islands. It must be remembered as a reason for adopting this proposition, that although we have offered like terms by our navigation act of 1824, to all nations, and that we have already practised upon this liberal system in our commercial intercourse with some, we have not found it to be injurious to our navigation. We may, therefore, safely extend the same to Great Britain, and trust for success to the economy, with which our vessels are built and navigated, the celerity of their movements, and the known activity of our merchants and seamen.”

to decline to accept of a partial admission into the ports of the colonies, thus evidently opened from considerations of local or temporary convenience, unless they were allowed a general liberty of trade with those colonies, independently of such considerations."

"It cannot, however, be supposed, it is not affirmed by Mr. Gallatin, that by granting the privilege thus in effect, exclusively to the United States, in the first instance Great Britain precluded herself from extending it to other nations, whenever the course of events should create a favourable occasion for doing so. Events, which intervened between 1822 and 1825, created such an occasion.

"As little can it be supposed, that, because Great Britain submitted at a moment of necessity to terms, which, though not unjust, were inconvenient to her, she bound herself to continue to submit to them, when that necessity should have passed away.

"Scarcity may justify the demand for a high price, and monopoly may give the power of exacting it; but there is surely no understood compact between the buyer and the seller, that the former shall not endeavour to make himself independent of the latter, by opening the market to general competition."

"Our right, either to open the ports of our colonies or to keep them closed, as might suit our own convenience, our right to grant the indulgence of a trade with those colonies to foreign powers wholly or partially, unconditionally or conditionally, as we might think proper, and if conditionally, on what conditions we pleased, was clear. We were not bound by any engagement to continue a monopoly of such indulgence to one foreign power against another. We had for three years felt the inconvenience of such monopoly. We naturally sought, therefore, in our new measure to avoid the recurrence of the like inconvenience by making our indulgence, general to all nations; and, in order to keep the regulation of that indulgence in our own hands, we granted it by spontaneous legislation, and not by positive treaty."

"But the British government further owes to the spirit of frankness, which it wishes to cultivate in all its relations with the United States to declare, that, after having been compelled to apply to any country the interdict, prescribed by the act of 1825, the British government cannot hold itself bound to remove the interdict, as a

matter of course, whenever it may happen to suit the convenience of the foreign government to reconsider the measures, by which the application of that interdict was occasioned.

"It is not made matter of complaint by the British government, that the United States have suffered the time to pass by, at which it might have been an object of greater importance to this country to induce the United States to come into their proposals.

"The United States exercised upon this point a free judgment, and they can on their part have no reason to complain, that Great Britain, after allowing ample time for maturing that judgment, is contented to abide the result of their decision.—

"If we direct our attention to the ground, which has been assumed by Mr. Canning, there can arise on this side of the Atlantic no difference of opinion. It is indefensible in its principle and injurious in its application. Whatever may be the right of Great Britain to consider the colonies as an integral part of her empire, and to restrict the supplying of their wants to the resources of the mother country, transported in their own vessels, this right of monopoly ceases, whenever other powers, either from necessity or interest, are admitted to its participation. It then becomes a subject of mutual interest. The supply of the one is as useful as the demand of the other, and, if the trade is opened to all, it should be opened on terms, liberal and just to both. But where would be the justice of abandoning her system of exclusive supply, and opening her ports to the admission of foreign productions, now become necessary to their prosperity or existence, but denying to the countries, from whence they are supplied, not only the privilege of transporting them, but even the privilege of an equal participation in their transportation. This has neither been the principle, nor the practice of other nations, having colonies. It is admitted to be the principle of the colony system to prohibit, as much as may be convenient, all trade between the colonies and foreign countries; but when policy requires the trade to be opened, to allow the vessels of foreign countries, the reciprocal right of being employed in it. The trade, when opened, ceases to be a fit subject for the application of those rules, by which portions of the *same empire* are governed. Other powers then become parties to the terms, by which it is to be carried on. It stands precisely on the footing of any other trade, and differs in no essential

principle from the trade, now carried on between the United States and the British ports in Europe. In both, the privilege, claimed for the American vessel, must be founded on reason, equal rights and common justice, and the attempt in either, to confine the carrying of the articles, sold or exchanged, to British vessels, is nothing less than an endeavour to make our productions tributary to the growth and protection of British navigation, at the expense of our own, and should be opposed by every consideration of interest, of honour, and of safety.

“ But if the principle assumed by Mr. Canning, is unsound, the application of this principle is not less injurious. For more than thirty years we have been admitted to this trade. The terms of admission, more or less liberal at different periods of our history, have, during this time, been the subject of amicable negotiation. The professed object of both governments has been to place it upon a footing of liberal reciprocity, and the only question in all the negotiations for the last ten years has been—what are the terms, which would be equal and reciprocal? During this long interval, thousands of our citizens, confiding in the continuance of a trade, believed to be necessary to the one, and beneficial to the other, and anticipating a speedy termination of differences, arising from points of a secondary importance, have embarked their capital in its prosecution. In the midst, however, of a *suspended* negotiation, at the very moment, when a new appointed minister was on his way, charged with instructions to terminate this controversy, on the terms proposed by Great Britain herself, without notice to our government, and without being anticipated by our citizens, a British order is issued, closing the West India ports against American vessels, at the same time, they are opened to the vessels of other powers. Our citizens are suddenly thrown out of employments, into which they were seduced by the pacific relations of the two countries, and are compelled at a loss, which none but merchants can understand, to direct their capital and their enterprise to new pursuits. There was nothing in the intercourse between the two countries, nothing in the liberal views, which were previously professed,—nothing in the common interest, by which, at the present period, the United States and England should be closely united, to justify so unexpected and so unjust a measure. Since, however, this measure has been adopted, it becomes our duty to meet it.”



In this whole negotiation the United States had this object in view. To obtain an admission, as in the ports of the mother country in Europe—to have their vessels and cargoes subject to no higher duties, than those of the mother country and the colonies themselves,—and, on leaving the islands, to have permission to go to any part of the world.

The British sought to confine America to a direct trade, to obtain for the vessels of the mother country the chance of a double freight, and to protect the productions and the navigation of the North American colonies.

If these objects are compared, it will, at once, be seen how extremely difficult any arrangement becomes.\*

\* The direct trade, being forbidden by statute and orders in council, has become a circuitous one, the colonial possessions of other European powers being employed, as places either of depot or transfer. This necessarily adds to the cost of freight, though it may not diminish the amount of the business. The trade may go to the Spanish islands, paying a duty of two per cent. for the benefit of drawback, and to the Danish and Swedish islands, under treaties lately concluded, without any charge.

## CHAPTER XIII.

## NEGOTIATIONS WITH BARBARY POWERS.

*Barbary powers no longer formidable—Mediterranean always subject to piracies—Remarkable sea—Celebrated in all ages—Power of corsairs diminished—Once very great—No proper diplomatic intercourse—Regencies dependent in a degree on Porte—Morocco independent—Before Revolution trade protected by England—Trade considerable—American vessels taken by Algerines in '85—Slavery mild in the East—Slaves article of traffic—Government attentive to trade, but poor and weak—Different modes of dealing with Corsairs—Tribute—Force—Treaty with Morocco—Suffered little from that state—Algiers, prince of pirates—Piracy, monopoly of government—Often bombarded—To little purpose—Rates of ransom—Government too poor to pay—Captives long detained—Mathurins—Affair not honourable to this country—Indebted to Corsairs for navy—Treaty—Very expensive—Frigate Washington carries Algerine ambassador to Constantinople—Algiers only country that ever declared war against United States—War of 1812—Unlucky time for Dey—Squadron sent to Algiers—Makes treaty and abolishes tribute—Tripoli—Navy first distinguished there—Treaty—Expedition of Eaton—Pashaw Hamet—Ill used—Treaty made by Lear—Too hasty—Article never communicated to government—Davis receives Hamet's family—Tunis—Near Carthage—Remarks respecting Turks—Ruins in East more interesting than in Europe—Regencies, but one want—Money—System in regard to Corsairs honourable to government and navy.*

THE trade of the country being no longer exposed to molestation, the Barbary powers have ceased to awaken alarm,—even to attract attention. But the early transactions of this people with the piratical governments of that coast merit any other appellation than honourable, as our

commerce enjoyed any other advantage than security. To that class of measures, the government from weakness has been compelled to pass over in silence, or to trust to time and accidents, or to a chaffering, hesitating policy for relief or redress, belongs the intercourse with the Corsair states. We now reflect on them with composure, only from a deep conviction, that the condition of things in this country left unhappily in most cases, neither choice nor remedy.

The Mediterranean, the most remarkable sea on the surface of the globe, is not the less so for the states, by which it is enclosed. On one border, we find the most ancient, on another the most polished people, of which history has left us any traces, and on the rich and beautiful territory, that projects far across it, stood the deep foundations of the most powerful as well as most extensive empire of antiquity. On the other hand, the shores of this sea have, from the earliest times, furnished an ample and lucrative commerce to the less fortunate nations, placed beyond the pillars of Hercules. Still, as if to lend more effect and relief to these surprising advantages, the bays and islands of the Mediterranean have, in all ages, been vexed, to an extreme degree, by pirates and freebooters. No scenes are more celebrated in poetry, modern or ancient;—none possess a beauty of a milder and more picturesque kind than the haunts and resorts of these corsairs, where, indeed, may be traced the track of the hero of more than one epic. At periods when nations, inhabiting those shores, have been most polished or powerful, piracies have not less existed, though it may be observed, they abounded in proportion to the corrupt factions and disorganized state of the population along its borders. The expedition of the great Pompey against the pirates was not only one of the most considerable armaments, ever equipped by Rome, but the undertaking, itself, is accounted by the biographer of that celebrated man, among his most conspicuous achievements.

We can only say, that the piracies of the Mediterranean, never entirely subdued, though perpetually assailed, are one of those moral phenomena, (of which a great many certainly

may be found) as extraordinary and quite as unaccountable by any process of reasoning or course of facts in relation to human faculties or passions, as the existence of Grecian temples on one of its shores and Egyptian on the other. For nearly half a century, Europe has occupied itself with the extermination of a slave trade, on the west coast of Africa, only worse because more extensive, than that which prevails on the north. But as to the Barbary corsairs, it seems now to be understood, that each nation shall provide, in that particular, for its own security as in any other case, solely, of a commercial nature. The memorials and projects for their annihilation presented to the Congress of Vienna by the knights of Malta and Sir Sydney Smith, were both received with the hand of the same courtier, and speedily laid on the same cold shelf.

But, notwithstanding these untoward circumstances, it is no doubt true, the power of the corsairs has sensibly diminished. It appears from history, that in the 17th century they were extremely formidable. We shall probably, by and by, see them all exterminated, not by force, a process uncertain and generally accompanied by a reaction in some other quarter, but by the progress of commerce and the arts. The territories, where they are now established in a sort of rude cantonment, are generally fertile;—at the head of the continent of Africa, within sight of Europe, and so valuable, that they will become the abode of a civilized race of men. That operation is already commenced, partially, in Egypt, and it will probably spread along the whole of the Barbary coast, when the Turkish encampment is moved across the Thracian Bosphorus and Greece, the Morea and the islands purified and thoroughly cleansed of their present profligate population. From these sources the pirates of Morocco\* and the Regencies are principally recruited.

In treating this subject, we are somewhat at a loss to select an appropriate name to bestow on the relations with

\* This word is generally written Morocco, though we believe the proper mode is Marocco,—see Jackson's work on that Empire.

the Barbary powers. With the exception of Morocco, they cannot strictly be called sovereign, though substantially independent. They pay an annual tribute to the Porte, and, even, if some of the officers are not appointed by the Sultan, at least, it was the custom to renew a portion of their troops from the Janissaries of Constantinople, an arrangement by no means calculated to expurgate or improve their population. At the same time, the transactions of this government have been carried on directly with the Regencies themselves. In the dismantled and disjointed condition of the different provinces of the Turkish empire during the last half century, even, if held together by a feeble thread in a sort of apparent union and general dependence on the Porte, still, individually wasting away and perishing under domestic rapacities and a debasing tyranny, the grand Seigneur, never having been held responsible for the acts of many of his governors, has not been consulted in the arrangements, that, from time to time, have been entered into with them;—a measure, the United States could not have adopted under any circumstances, never having succeeded in establishing a diplomatic agent at Constantinople.\* The conventions, concluded by this government with the Barbary powers, have usually been denominated treaties of peace, but the attacks, that constituted a state of war, have, in every instance, been piratical, accompanied necessarily with circumstances, which, in the ordinary customs of nations, disfranchise their authors, and disable them from forming treaties of any sort. The instruments, themselves, contain provisions and stipulations, disqualifying them, in technical language, from entering into a diplomatic code, plainly indicating an absence of the essential ingredient of a treaty,—equality of condition and circumstances. The diplomatic relations of this country with those states will, therefore, be strictly considered in the light of

\* The first treaty with Tunis was made under the auspices of the Emperor Selim. Morocco should be excepted from this remark, being an independent empire. We may, also, say in this place, that Russia and Austria secure the protection of their vessels by treaties with the Porte.

exceptions, as well as the description of establishments now maintained at the capitals of the Regencies, consisting of a consul general at Algiers, with consuls at Tunis, Tripoli and Tangier. Those officers receive stated salaries instead of fees, (the mode of paying consuls adopted in this country) and are invested with commercial as well as diplomatic powers, differing in that respect from all other agents employed by the United States.

Before the revolution\* the colonies had a considerable trade to the Mediterranean, estimated at about 20,000 tons of navigation, and employing 1200 seamen. Being protected by the mother country, it was not exposed to molestation. During the war this traffic was necessarily abandoned. The peace, however, of '83, having restored to us the use of the principal fisheries, and little capital being required for the purpose, it was speedily resumed with spirit. But the spectacle of a new flag, appearing in the Mediterranean, soon caught the vigilant, greedy eye of the corsairs, not so much surprised, perhaps, at the foundation of another State in the world, as that any people should possess the temerity to venture into that sea without adequate protection. This fact, unfortunately, was soon ascertained, and, we believe, in the second summer after the peace one of our vessels† was captured and carried into Tangier, but the crew were liberated by the interposition of the Spanish consul. At that time we owned but a single ship of war, the *Alliance*, sold, by order of congress, the following year. In the summer of 1785 the *Dey* of Algiers took, even, the trouble to declare a formal war against the United States, having, for that proceeding, the best possible reason for a person in his condition and of his character,—a rich commerce completely exposed.

\* It is not easy to ascertain the precise amount of this, or any other branch of colonial trade, as the custom house records of several of the States were lost during the war. But, according to a report of the secretary of state of December 1790,—one-sixth part of flour and wheat, and one-fourth of dried and pickled fish found their best market in the ports of the Mediterranean.

† The Brig *Betsey* captured in October 1784.

For two years the Pashaw had observed this flag, quietly and inoffensively creeping along the shores of the Mediterranean, without a single armed vessel by its side. No tribute having been paid into his treasury, it was quite evident the Americans were enjoying the benefits of a trade, upon terms the rigid justice of Algiers granted to no nation. Six or eight vessels were accordingly equipped by that power, and, sailing past the Straits of Gibraltar, began immediately to exercise their atrocious acts of piracy on the high seas. The first vessels, that had the misfortune to fall into their hands, were the schooner *Maria* of Boston, and the ship *Dauphin* of Philadelphia, both captured in the month of July 1785, and their crews, amounting to 21 persons, carried slaves to Algiers. These men suffered a long, and, as it respects the government, a disgraceful captivity.

The customs of the Eastern countries have introduced a modification of the system of buccaneering, which, perhaps, in some cases, cannot be considered an alleviation to the unhappy victims of this deplorable business. The lives of the crew are spared from any other motive, it is true, than tenderness of feelings, but as human beings, in every part of the East, have been, from the earliest time, of which we have the least record, an object of commerce, the piracies of the Barbary powers have never been accompanied with murder and bloodshed. Slavery, even for life, under cruel and debasing circumstances, affects the imagination less than the least hasty murder, and it is likely, if the crews of these vessels had been slaughtered in cold blood on their own decks, more speedy measures of protection would have been adopted. As it was, there can be little doubt, but that many of them died in consequence of their sufferings in bondage.

It would not be just to impute to the government a want of attention to this subject. The complaint, that legitimately may be made, is of a different description. The dangers, to which our commerce would be exposed in the Mediterranean, were foreseen at a time, when even some slight degree of doubt hung over the contest with the mother coun-

try. In the treaty, by which the assistance and alliance of one of the most powerful nations of Europe were secured for the cause of our own independence, a particular provision was inserted for the purpose of having the advantage of the cooperation of the French in making arrangements with the Barbary powers. This stipulation will be found in the 8th article,—a sufficient proof that great value was attached to that portion of our trade, and that it was considered completely in an exposed state. It was not one of the most pleasing, or satisfactory considerations, that in a few months after the independence had been acknowledged by the mother country, all the corsairs of the Mediterranean should have been slipped loose on our commerce. Entirely secure as colonies, the country, become independent, could afford no protection. In May '84 Congress gave full authority, by a special commission, to Messrs. Adams, Franklin and Jefferson to negotiate treaties of amity and commerce with the Barbary powers, and in the following year, they were authorized to send agents to those courts, provided the whole expense did not exceed 80,000 dollars. Under this provision agents were despatched to Morocco and Algiers.

Several methods of treating with the Barbary states have been adopted by European governments. Some parties have proposed a tariff for the ransom of prisoners, an arrangement that can be considered as little else than a bounty on the number of persons, taken by the corsairs. The first object is to prevent capture, but to agree to give a certain sum for every captive is another form of offering a premium to the captors. But the most general and probably, in the outset, the cheapest mode is by purchasing an exemption from hostilities. Powerful as well as rich nations have, at different times, condescended to yield to this humiliating alternative. Tribute costs less than force. The maintenance of two frigates in the Mediterranean would speedily absorb the annual offering of a single state. The last treaty made by the Bourbon government in the last century with one of the Barbary powers, was for fifty years, and, among the stipulations, it was agreed to pay 100,000 dollars annually, and distribute



presents, established by custom, every ten years. But the Algerines were not deterred by this convention from capturing French vessels. Every little irregularity, in delivering the presents or tribute, is taken advantage of as a pretext for aggressions. The Dutch, Danes, Swedes and Venetians have, also, adopted the method of buying peace, and at the time the original negotiations were going on between this country and the Barbary states, it was supposed that England annually paid about 300,000 dollars. The smallest sum for the peace of the four powers would have been 1,000,000 dollars, though we possess but few means of arriving at an accurate estimate. At any rate, we were far from being in a situation in 1786, to pay so large a sum;—we could not even afford to redeem the captives already in their hands. M. de Vergennes, we have some where seen it remarked, inclined altogether to the tribute, believing that money was the sole agent with these barbarians. This impression had entirely influenced him in negotiating the treaty we have already mentioned, and as that skilful, experienced diplomatist and minister lived many years at Constantinople, his opinion is worthy of great consideration. But it is certainly not to be denied, that neither tribute nor presents alone have been sufficient to secure, even, the strongest states from molestation, a small force being indispensable at the same time.

It now remains to say a few words on the only other method of restraining the piracies of these states—the employment of force,—a form of protection, at the first blush, more honourable and, at all times in transactions with freebooters, more agreeable to the feelings. Still, do we contend in this business for any sort of right,—for a point of honour? What place shall we assign among nations to buccaneers, even if organized under a regular form of government. If their corsairs capture our vessels, what point of the laws of nations is violated? In seeking an answer to these brief questions, we believe it will be found in substance to be this;—the speediest, most effectual mode of extermination will, in reality, be the most honourable. As to force, there are two disposi-

tions of it ; blockade and bombardment. A score of times, certainly, these towns have been bombarded the last two centuries ;—the scene of a signal exploit by Blake in the time of Cromwell, and of du Quesne in the reign of Louis XIV., also remarkable as being the first occasion, in which bomb vessels were used. We have heard of drawing the plough, of sowing salt on the spots, where palaces and temples stood. This seems to be the limit of the vengeance of man,—of his power in devoting to destruction ; and, even if the expression is poetical, no more perfect solitudes now exist, than the vast enclosures, known as the sites of the most populous cities of ancient times. Commerce, falling into other channels, or the decay of morals, or the desolation of wars may, perhaps, account for the ruins found in the East, but these surprising effects were not produced by the operation of a single war, of a single year. If Algiers, or Tunis, or Tripoli should be battered level to the sand, this is but one head of the monster. The deserts, behind, or the islands before them will, in a few months, turn out another swarm, rear another set of adventurers and plunderers, ready to settle down on the first fresh ashes, they find along the coast. That city is speedily rebuilt, in which the inhabitants have no fixed modes of industry, or courses of commerce. In the mean time, the real monster is in the habits of the people, instigated by idleness or depravity to seek this species of employment. Count d'Estaing, one of the oldest naval officers of the time, said, that bombarding a pirate town was like breaking windows with guineas ; to which we may add the quaint remark of the Dey of Algiers (after the attack by du Quesne), when informed of the expense of the expedition, that, for half the sum, he would have burnt down the whole city. D'Estaing recommended a permanent blockade by all commercial powers, each contributing a certain proportion of an armed force. This proposal was made in 1784, and does not differ, in many respects, from the scheme of Sir Sydney Smith, offered to the consideration of the congress of Vienna.

The extreme difficulty of keeping these barbarians in proper subjection cannot be better seen than in the account

of the last combined expedition against Algiers. This took place in 1816, under the command of Lord Exmouth, consisting of a fleet of more than twenty sail. Algiers was bombarded five or six hours, at a loss, on the part of the allies, of nearly a thousand killed and wounded;—51,000 round shot and 1000 shells were cast into the city. In the teeth of the British navy, the Dey had thrown the English consul into prison, and detained in slavery a number of persons, the English were bound to protect. Fifty-one thousand round shot brought his Highness to terms, and upwards of 3000 captives, principally inhabitants of the European states, bordering on the Mediterranean, were liberated. Two facts follow from the history of this bombardment, viz.—that those corsairs are continually carrying on their piracies,—a slave trade in Europeans;—and that they occasionally reach a degree of insolence and hardihood, as to set at defiance the most powerful states. The deranged condition of the Turkish provinces along the Mediterranean, the last seven years, will add extremely to the strength of the Regencies.

We have already mentioned the fact of a number of American citizens having been taken in the summer of '85 by the Algerines. We must, for the present, lay aside a further account of that matter, for the purpose of giving a relation of the transactions of this government with Morocco, following, in that particular, the chronological order we have proposed for our direction in the other parts of this work. Morocco cannot justly be ranked among the corsair states, though in some degree composed of the same description of population; but holding one of the pillars of Hercules, occupying one side of the narrow pass into the Mediterranean, it is most favourably situated for the annoyance of commerce. That empire has no dependence upon, or connexion of any sort with the Porte, but its principal difference from the Regencies consists in the amount of commerce this country has had, at intervals from the beginning of the century, with Mogador, the chief port on the Atlantic.\*

\* "Vessels, going from Boston, Salem and other ports of America, with East and West India produce, to Mogador, receive in return the

Messrs. Barclay and Franks, sent to Morocco under the commission of Messrs. Adams and Jefferson, who remained in Europe with the powers already enumerated, negotiated a treaty with that government in 1786. This treaty, given below,\* contained the most liberal principles, and, as to neu-

various articles of Barbary produce, and by this means the agents of American merchants, established at Mogador, are enabled to undersell us (the English) in all East and West India produce.”—*Jackson's Morocco.*

The amount of our commerce there has depended principally on the political state of Europe or of our own country ;—it cannot be called a regular or fixed trade,—for example, in 1809 the exports of domestic and foreign produce to the Morocco and Barbary states amounted to \$ 1,511,777,—in 1817, to \$ 8,639—a place, therefore, only of deposite.

\* “ *In the name of Almighty God :—*This is a treaty of peace and friendship, established between us and the United States of America, which is confirmed, and which we have ordered to be written in this book, and sealed with our royal seal, at our court of Morocco, on the twenty-fifth day of the blessed month of Shaban, in the year one thousand two hundred ; trusting in God it will remain permanent.

“ ART. 1. We declare that both parties have agreed that this treaty, consisting of twenty-five articles, shall be inserted in this book, and delivered to the honourable Thomas Barclay, the agent of the United States, now at our court, with whose approbation it has been made, and who is duly authorized, on their part, to treat with us concerning all the matters contained therein.

“ ART. 2. If either of the parties shall be at war with any nation whatever, the other party shall not take a commission from the enemy, nor fight under their colours.

“ ART. 3. If either of the parties shall be at war with any nation whatever, and take a prize belonging to that nation, and there shall be found on board subjects or effects belonging to either of the parties, the subjects shall be set at liberty, and the effects returned to the owners. And if any goods, belonging to any nation, with whom either of the parties shall be at war, shall be loaded on vessels belonging to the other party, they shall pass free and unmolested, without any attempt being made to take or detain them.

“ ART. 4. A signal, or pass, shall be given to all vessels belonging to both parties, by which they are to be known when they meet

tral rights, puts to shame all the conventions we have made with the christian nations of Europe. The coast of Barbary

at sea ; and if the commander of a ship of war of either party shall have other ships under his convoy, the declaration of the commander shall alone be sufficient to exempt any of them from examination.

"ART. 5. If either of the parties shall be at war, and shall meet a vessel at sea belonging to the other, it is agreed, that if an examination is to be made, it shall be done by sending a boat with two or three men only ; and if any gun shall be fired, and injury done, without reason, the offending party shall make good all damages.

"ART. 6. If any Moor shall bring citizens of the United States, or their effects, to his majesty, the citizens shall immediately be set at liberty, and the effects restored ; and, in like manner, if any Moor, not a subject of these dominions, shall make prize of any of the citizens of America, or their effects, and bring them into any of the ports of his majesty, they shall be immediately released, as they will then be considered as under his majesty's protection.

"ART. 7. If any vessel of either party shall put into a port of the other, and have occasion for provisions, or other supplies, they shall be furnished without any interruption or molestation.

"ART. 8. If any vessel of the United States shall meet with a disaster at sea, and put into one of our ports to repair, she shall be at liberty to land and reload her cargo without paying any duty whatever.

"ART. 9. If any vessel of the United States shall be cast on shore on any part of our coasts, she shall remain at the disposition of the owners, and no one shall attempt going near her without their approbation, as she is then considered particularly under our protection ; and if any vessel of the United States shall be forced to put into our ports by stress of weather, or otherwise, she shall not be compelled to land her cargo, but shall remain in tranquillity until the commander shall think proper to proceed on his voyage.

"ART. 10. If any vessel of either of the parties shall have an engagement with a vessel belonging to any of the christian powers, within gun shot of the forts of the other, the vessel so engaged shall be defended and protected as much as possible, until she is in safety ; and if any American vessel shall be cast on shore on the coast of Wadnoon or any coast thereabout, the people belonging to her shall be protected and assisted, until, by the help of God, they shall be sent to their country.

is, however, a poor school to propound those principles. An express stipulation was inserted, that prisoners should

"ART. 11. If we shall be at war with any christian power, and any of our vessels sail from the ports of the United States, no vessel belonging to the enemy shall follow, until twenty-four hours after the departure of our vessels ; and the same regulation shall be observed towards the American vessels sailing from our ports, be their enemies Moors or christians.

"ART. 12. If any ship of war belonging to the United States, shall put into any of our ports, she shall not be examined on any pretence whatever, even though she should have fugitive slaves on board, nor shall the governor or commander of the place compel them to be brought on shore on any pretext, nor require any payment for them.

"ART. 13. If a ship of war of either party shall put into a port of the other, and salute, it shall be returned from the fort with an equal number of guns, not with more or less.

"ART. 14. The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favoured nation, for the time being ; And their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and seaports, whenever they please, without interruption.

"ART. 15. Merchants of both countries shall employ only such interpreters, and such other persons to assist them in their business as they shall think proper. No commander of a vessel shall transport his cargo on board another vessel ; he shall not be detained in port longer than he may think proper ; and all persons employed in loading or unloading goods, or in any other labour whatever, shall be paid at the customary rates, not more and not less.

"ART. 16. In case of war between the parties, the prisoners are not to be made slaves, but to be exchanged one for another, captain for captain, officer for officer, and one private man for another ; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed, that all persons shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant, or any other person, authorized by either of the parties.

"ART. 17. Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper ; and may buy and sell

not become slaves, and should be exchanged. The treaty was concluded for fifty years.

all sorts of merchandise but such as are prohibited to the other christian nations.

"ART. 18. All goods shall be weighed and examined before they are sent on board ; and to avoid all detention of vessels, no examination shall afterwards be made, unless it shall first be proved that contraband goods have been sent on board ; in which case, the persons who took the contraband goods on board, shall be punished according to the usage and custom of the country, and no other person whatever shall be injured, nor shall the ship or cargo incur any penalty or damage whatever.

"ART. 19. No vessel shall be detained in port on any pretence whatever, nor be obliged to take on board any article without the consent of the commander, who shall be at full liberty to agree for the freight of any goods he takes on board.

"ART. 20. If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the consul shall decide between the parties ; and whenever the consul shall require any aid or assistance from our government, to enforce his decisions, it shall be immediately granted to him.

"ART. 21. If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial ; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

"ART. 22. If an American citizen shall die in our country and no will shall appear, the consul shall take possession of his effects ; and if there shall be no consul, the effects shall be deposited in the hands of some person worthy of trust ; until the party shall appear who has a right to demand them ; but if the heir to the person deceased be present, the property shall be delivered to him without interruption ; and if a will shall appear, the property shall descend agreeable to that will, as soon as the consul shall declare the validity thereof.

"ART. 23. The consuls of the United States of America, shall reside in any seaport of our dominions that they shall think proper ; and they shall be respected, and enjoy all the privileges which the consuls of any other nation enjoy ; and if any of the citizens of the United States shall contract any debts or engagements, the consul shall not be in any manner accountable for them, unless he shall have

We have in reality suffered very little from Morocco ; in general they have had few cruisers. The capital of the empire, not being situated on the coast, and the habits and occupations of the people rather agricultural than seafaring,

given a promise in writing for the payment or fulfilling thereof ; without which promise in writing, no application to him for any redress shall be made.

" ART. 24. If any differences shall arise by either party infringing on any of the articles of this treaty, peace and harmony shall remain notwithstanding, in the fullest force, until a friendly application shall be made for an arrangement ; and until that application shall be rejected, no appeal shall be made to arms. And if a war shall break out between the parties, nine months shall be granted to all the subjects of both parties, to dispose of their effects and retire with their property. And it is further declared, that whatever indulgence in trade or otherwise, shall be granted to any of the christian powers, the citizens of the United States shall be equally entitled to them.

" ART. 25. This treaty shall continue in full force, with the help of God, for fifty years.

" We have delivered this book into the hands of the beforementioned Thomas Barclay, on the first day of the blessed month of Ramadan, in the year one thousand two hundred.

" I certify, that the annexed is a true copy of the translation made by Isaac Cardoza Nunnez, interpreter at Morocco, of the treaty between the emperor of Morocco, and the United States of America.

" THOMAS BARCLAY.

" ADDITIONAL ARTICLE.

" *Grace to the only God.*

" I, the underwritten, the servant of God, Tahar ben Abdelkack Tennish, do certify, that his imperial majesty, my master, (whom God preserve) having concluded a treaty of peace and commerce with the United States of America, has ordered me, the better to complete it, and in addition of the tenth article of the treaty, to declare, 'That if any vessel belonging to the United States, shall be in any of the ports of his majesty's dominions, or within gun shot of his forts, she shall be protected as much as possible ; and no vessel whatever, belonging either to Moorish or christian powers, with whom the United States may be at war, shall be permitted to follow or engage her, as we now deem the citizens of America our good friends.'

" And in obedience to his majesty's commands, I certify this declar-



they conduct a considerable commerce with parts of the interior of Africa, by means of caravans, but their navigation is inconsiderable. Our own commerce, when it was least protected, fortunately escaped molestation from the circumstance, that, shortly after the treaty was signed, a civil war broke out in every part of Morocco among the sons of the late Emperor Sidy Mohammed Ben Abdallah. This state of things prevented Mr. Barclay, appointed consul to that kingdom, from taking up his residence at Tangier. In 1791, the government appropriated 20,000 dollars for the purpose of obtaining a recognition of the treaty from the new Emperor. This money was distributed in presents, and in 1795 a formal ratification of that instrument took place.

All things remained quiet with Morocco till early in 1802, when the consul was ordered to leave the dominions, in consequence of the United States not having sent a present, and refusing to allow convoy for some Moorish vessels, laden with wheat, and bound to Tripoli. But the difficulties were removed in the autumn of the same year, on information being given to the emperor by the consul, that the President had directed one hundred gun carriages to be made and sent to him. It is hardly worth while to remark in this place, that the treaty of '87, with Morocco, confirmed in '95, was concluded for fifty years, and stipulated neither presents nor tribute; but the opinion has before been expressed, that,

ation, by putting my hand and seal to it, on the eighteenth day of Ramadan,\* in the year one thousand two hundred.

"The servant of the king my master, whom God preserve.

"TAHER BEN ABDELKACK TENNISH.

"I do certify, that the above is a true copy of the translation made at Morocco, by Isaac Cordoza Nunnez, interpreter, of a declaration made and signed by Sidi Hage Taher Tennish, in addition to the treaty between the emperor of Morocco and the United States of America, which declaration the said Taher Tennish made by the express directions of his majesty.

"THOMAS BARCLAY."

\* "The Ramadan of the year of the Hegira 1200, commenced on the 28th June, in the year of our Lord 1786.

without a naval force at hand, no terms could be kept with the Barbary powers, and that an occasional present will be found by no means misplaced. Permission to the consul to return to Tangier was signified to him in the following terms ;

*" In the name of the most merciful God—*There is no power or force but that, proceeding from the great and most high God. To James Simpson, consul of America. Your letter reached the high presence of our master, (whom God preserve) and he was thereby informed of the orders, you had received from the American nation.

*" Our master's pleasure is, that you return to your house, and he has given his orders accordingly, that you may remain as you have hitherto done, in the exercise of your office, and herewith goes the order for that effect to Alcayde Abderhamen Hashash ;—so return to your house.*

*" His majesty, also, orders me to acquaint you, that he still adheres to what you stipulated with Sidy Mohammed Ben Ottoman (to whom God be merciful) which is, that your nation shall send each year one of your people to the high presence of our master, with your present ; but if it should be difficult for you to come every year by reason of the distance of your country, you will come once in every two years.*

*" Upon this the convention with your nation was made and the treaties signed. If you abide by this agreement and fulfil it, you will be as you were, and your attentions will increase our friendship ; and if you will not fulfil it, you will see and settle your matters. What has happened to you now has been occasioned by your own tardiness and neglect in this particular, but our master (whom God preserve) now forgives all that, and do you on your part as justice directs, and God will assist you.*

*" Written by order of our master (whom the Almighty God has exalted) on the seventh of Rabis á Tany 1217, (corresponding with the 6th August 1802) by his servant Mohammed Ben Absalem Selawy, intrusted with the affairs of foreign nations, whom God purify of his sins.—Amen."*

In August 1803 the brig *Celia* of Boston was taken by a Moorish cruiser, but shortly after recaptured by the American frigate *Philadelphia*, and the act disavowed by the emperor. We here conclude the account of our relations with

Morocco, which, happily, has been a brief one. We have at present a consul at Tangier, who receives a salary of 2000 dollars.

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#### ALGIERS.

Algiers has well earned the uncommon honour of being the prince of pirate states ;—a whole nation of freebooters ;—a government, supported for centuries, chiefly, by robbery on the high sea, and organized for little other purpose ; and such is the refinement introduced in the system of the Pashaw of that regency, that piracy has become a monopoly of the government ;—individuals being strictly forbidden to undertake cruises on their own account. When the word pirate is pronounced, it rarely brings to the mind any other association than that of a few outlaws, or at the most, even in the partly fabulous times of the buccaneers in the West India seas, a set of adventurers, collected together under some bloody leader, for private plunder. But it is very like a contradiction of terms, that pirates, who are deprived of the benefit of all law, preying indiscriminately upon all people, should, nevertheless, possess and enjoy, with one slight exception, rather of name than substance, all the legitimate, well recognised elements of a national existence.

No city in Europe has been oftener bombarded than Algiers, and apparently to less purpose. We have already remarked, that the power of the Corsair States is probably on the wane ; but it is quite evident that the formidable squadron, assembled by lord Exmouth in 1816, before Algiers, mentioned in a preceding page, presented on its decks the least array of force, that could, with safety, have undertaken the expedition. The dey was humiliated,—his beard swept the ground ; but in eight months we have an assurance from the best authority, that the fortifications of Algiers were thoroughly renewed, and a heavy additional battery constructed. The Algerines, too, were, doubtless, well admonished of the wisdom of suffering half a dozen three deckers to drop their anchors quietly

within an arrow's flight of their cannons' mouths, before a shot was fired from them. There can be no reasonable objection to an occasional bombardment of a pirate town;—it is a good drill for a rusty navy. But the only radical, effectual cure of this monstrous, disgraceful evil, is in the foundation of colonies with European habits of life and commerce along the Barbary coast. The country is rich and fertile with a temperate climate, and in every respect appears as capable of furnishing materials for opulent and populous cities as regions, farther situated to the east on the same continent.

From 1785, when war was declared by Algiers, to 1815, America has suffered exceedingly from that Regency; our vessels have been taken; crews detained in slavery, exposed to the plague and severe sufferings from bad treatment, premiums of insurance greatly augmented, and, separate from an entire, occasional suspension of the trade, heavy expenses have been incurred in maintaining armed vessels in the Mediterranean. In 1786 Messrs. Lamb and Randall were sent by the American ministers at Paris and London to Algiers to endeavour to procure the liberation of twenty-one American captives. The dey received them with becoming attention, and had the politeness to inform them, that he was well acquainted with the exploits of their illustrious countryman, General Washington, and feeling a great admiration of his conduct, and never expecting to see him, if Congress would do him the favour to send him a full length portrait of that celebrated person, he would hang it up in his palace at Algiers. This mark of sensibility, however, does not seem to have had any effect on the dey's mind as to the price of the captives. Those prices in 1786 were, according to Mr. Lamb,

|                         |              |                  |
|-------------------------|--------------|------------------|
| For 3 captains          | \$ 6000 each | \$ 18,000        |
| 2 mates                 | 4000 "       | 8,000            |
| 2 passengers            | " "          | 8,000            |
| 14 seamen               | 1400 "       | 29,600           |
|                         |              | <hr/> 53,600     |
| For custom, 11 per cent |              | 5,896            |
|                         |              | <hr/> \$ 59,496, |

being at the rate of about \$ 2800 a captive, while the agents only had authority to offer \$ 200. These terms, it could not be expected, the dey would accept, for he had just received \$ 500 for some French, redeemed by the Mathurins ;—this sum, including the expenses, could not be at a rate less than \$ 500.

The general of the Mathurins offered his services (which were accepted by Congress) to procure the redemption of the American captives.\* But it was an express condition on the part of this ecclesiastic, that the utmost secrecy should be observed. The reason given for this necessity, no doubt a sound and practical one, was still not agreeable to the feelings ;—if once known that they bought the slaves of other nations, the market for their own countrymen would be injured. There was another stipulation in this arrangement, obviously reasonable, and, perhaps, as it respected the captives in general, altogether just, but it must have been somewhat shocking to the sensibility of a nation, just emerging from a colonial bondage, and that naturally attached great value to the freedom of its citizens. It seems that in consequence of a public appropriation, the American captives were in the enjoyment of a more liberal allowance than their unfortunate companions in slavery. The Mathurin required, that this should be discontinued, having an effect to raise the price. He was desirous to impress on the mind of the dey, that the Americans were supported by charity, and looked to the same source for their redemption. No Americans ever having been before taken, it was important to keep the price low by way of precedent, and if large sums were now paid, the Algerines would hereafter pursue the Americans with great eagerness.

“To destroy, therefore, every expectation of a redemption by the United States, the bills of the Spanish consul at Algiers, who had made the kind advances, before spoken of, for the sustenance

\* *Ordo Religiosorum S. S. Trinitatis Redemptionis Captivorum.* They are called in English, Mathurins and brothers of the redemption. It was their business to go and ransom prisoners, held in slavery on the Barbary coast.

of our captives, were not answered. On the contrary, a hint was given that these advances had better be discontinued, as it was not known that they would be reimbursed. It was necessary even to go further, and to suffer the captives and their friends to believe for a while, that no attention was paid to them, no notice taken of their letters. They are still under this impression. It would have been unsafe to trust them with a secret, the disclosure of which might forever prevent their redemption by raising the demands of the captors to sums, which a due regard for our seamen still in freedom would forbid us to give. This was the most trying of all circumstances, and drew from them the most afflicting reproaches."

It is not possible to read of a more cold blooded transaction. Compelling men to suffer slavery, hunger and every privation for years, in order that the price of redemption might be kept low. We may well ask, what price? Did the American government intend to suffer their seamen to be exposed for years to the depredations of these corsairs, and make no other provision for their protection than a low rate of redemption, obtained by the bondage and sufferings of those unfortunate men, who happened to be the first victims of the pirate? This chaffering, cheapening system was continued after the organization of the federal government, and if the transactions with Algiers do no honour to the confederation, its successor must, in justice, share some portion of the reproach.

In 1789 a sum of money was deposited in Paris subject to the order of the Mathurin General, who immediately commenced the traffic. But unfortunately the price of slaves had risen greatly within three years. We shall give here the words of the charitable redemptioner himself, addressed to the superior of his order August 19, 1789.

"Being at Aix for some time in order to make use of the baths, I there received the letter, which you did me the honour to write me. I find great difficulties in the way of executing the redemption, about which you speak. It does not appear to me possible to give such colour to our proceedings with the Algerines, as to make them believe that the United States take no part in the negotiations, while their subjects only should be redeemed. As to the

price of 2500 livres per head, it will not suffice for the voracity of these covetous people, either because they have more need of slaves than money, since the general redemption of the French and Spanish captives, or that having humiliated Spain and fearing little from France, they have arbitrarily raised the rate of the slaves; and notwithstanding the tenor of the treaties with France, the office at Marseilles was the last year obliged to pay for one slave 4000 livres. It is true that the number, redeemed by France in 1785, did not amount to one hundred louis per head, but the king made the agreement in his own name, and in a favourable moment he obtained a piece of politeness from the Dey, a politeness, which we cannot flatter ourselves with seeing again renewed, especially at a time, when the regency carries its pretensions so highly against France, as to lead us to fear lest some rupture should follow, which can, perhaps, be avoided only by new sacrifices. Supposing these difficulties removed, you cannot take upon yourselves the said redemption without a permission from the court, especially if you wish to appear as acting by virtue of the order for the redemption. I am persuaded that the ministry, being first informed, will not refuse you the said permission.

"It will then be necessary to have a confidential person on the spot to act secretly, so as not to irritate the French slaves, who might rise against the nation, and sound the intentions of the regency with respect to the price. The Père Terillo, governor of the hospital, is a Spaniard and unfit for this negotiation. M. Paret the only French merchant and manager of the house of Messrs. Gimen at Algiers might execute the commission, but this house will always create a suspicion, that the United States are about agreeing for the redemption.

"I hardly venture to propose an idea, which strikes me, but it is the best I have. Could you not send a religious person, not as a redemptioner, but only as a chaplain of the hospital of slaves, for which he might perform the necessary functions? M. Gache appears to me the most proper and best calculated to conduct an affair, the success of which I much desire, as well on account of the interest you take in it, as for the satisfaction of Mr. Jefferson. I would not wish to put myself in the way on account of my age, though I speak Italian and Spanish, which is used at Algiers and especially in the hospital. However, if you should not find a bet-

ter person, I shall, still, undertake this voyage in order to give you some marks of my submission, and the desire, which I have, to concur in your zeal for the love of redemption and good of humanity.

"The voyage of a religious person would occasion some expense, but it cannot be considerable, because he might lodge in the hospital, and there would be no commission fees to pay in case of success. Not being near enough to confer with M. Gache, I address the present to him, that he may transmit it to you with the observations he may make upon it."

While the Mathurins were engaged in this holy work, a stupendous revolution arose in their own country ;—their broad lands and revenues were transferred to the public, and they, thrown suddenly on the world, poor and desolate; sought, themselves, rather succour and support than possessed the means of administering either to the sufferings, or of loosening the fetters of their brethren in want or captivity. Such had been the progress made in liberating the American captives at Algiers up to the year 1790. It may be some satisfaction to the reader to see the state of the prisoners at this period ; in the mean time, one had been ransomed and six died, leaving fourteen of the original number. In July 1790 their names with the sums demanded by the regency for their ransom were as follows.

*"Crew of the ship Dauphin captured July 30, 1785.*

|                                            |        |
|--------------------------------------------|--------|
| Richard O'Brien, captain—ransom demanded   | \$2000 |
| Andrew Montgomery, mate                    | 1500   |
| Jacob Tessanier, French passenger          | 2000   |
| William Patterson, seaman (keeps a tavern) | 1500   |
| Philip Sloan                               | 725    |
| Peleg Lorin                                | 725    |
| John Robertson                             | 725    |
| James Hall                                 | 725    |

*Crew of the schooner Mary, taken July 25, 1785.*

|                                         |        |
|-----------------------------------------|--------|
| Isaac Stephens, captain                 | \$2000 |
| Alexander Forsythe, mate                | 1500   |
| James Cathcart, seaman (keeps a tavern) | 900    |
| George Smith (in the king's house)      | 725    |



|                                                                                                                |         |
|----------------------------------------------------------------------------------------------------------------|---------|
| John Gregory . . . . .                                                                                         | 725     |
| James Hermit . . . . .                                                                                         | 725     |
| <hr/>                                                                                                          |         |
| Algerine requires . . . . .                                                                                    | 16,475  |
| Duty on the above sum 10 per cent. . . . .                                                                     | 1,647½  |
| Sundry gratifications to officers of the Dey's household and regency equal to 17½ za. to each person . . . . . | 240½    |
| <hr/>                                                                                                          |         |
| 34,792½ Mexican dollars at 38 mozunas each are zequins . . . . .                                               | 18,362½ |

By taking a variety of prices, at which persons about this time had been ransomed, we find the average cost to have amounted to 1923 dollars. It was evident that the American trade to the Mediterranean depended on the liberation of these captives, and, if we weigh flesh against gold, the value of that commerce to the country was much beyond the difference of price of redemption. Fourteen men were suffered to remain in captivity ten years on account of a few thousand dollars, when it was obvious, that our commerce would be always exposed to the corsairs, and, if the government could not employ force, they had no other alternative than to buy protection. It can hardly be called indifference or inattention on their part, for their ministers abroad were engaged in a continual correspondence on the subject, but it indicates weakness and poverty.

In 1792 President Washington proposed to the Senate to conclude a treaty with Algiers, allowing \$ 40,000 as a ransom for the Americans, now reduced to thirteen in number, \$ 25,000 to the Dey at the signature and \$ 25,000 in an annual present. Admiral John Paul Jones was appointed commissioner for the peace and consul to Algiers. This negotiation was considered confidential by the government, and we observe that the commission and instructions are all made out in Mr. Jefferson's handwriting, then secretary of state. We have not been able to discover any other motive for the remarkable secrecy practised on this occasion, than a suspicion, entertained by the government, of an insidious and disguised opposition at Algiers. The only ground for this suspicion

appears to have been a contract, into which a Mr. Simpson of Gibraltar entered, by direction of the Bulkleys of London, to redeem all the American captives for \$34,792. It was never known by whose orders this arrangement took place, though supposed a society in London, who, not choosing to pay the price, gave up the bargain. Jones, however, was directed to deny all knowledge of this contract, which the Dey had carefully registered in his book, and insisted upon having fulfilled.

Jones having died in London, and Barclay, (subsequently appointed to arrange the business) at Lisbon early in '93, another unfortunate delay took place. In the mean time, our commerce had a short respite from the piracies of the Algerines in consequence of a war between that Regency and Portugal, who guarded with a tolerable force the straits of Gibraltar, prevented the Corsairs from extending their cruises to the Atlantic, and in the Mediterranean, afforded by convoys considerable protection to American vessels. This negotiation was then put into the hands of Colonel Humphreys, who, however, never went to Algiers, but while in the south of Spain, endeavouring to get across to the Barbary coast, received the disastrous intelligence that Portugal had concluded a truce for twelve months with the Algerines. In a single cruise ten of our vessels were swept off by these pirates, so that in November 1793, the number of captives at Algiers had increased to a hundred and fifteen, of which only ten remained of the unfortunate men, originally captured in 1785.\*

\* Algerine Maritime force the 12th November 1793, viz :

One Frigate of 44 guns built in Algiers, by Spanish king's constructor.

|     |          |    |   |                                       |     |
|-----|----------|----|---|---------------------------------------|-----|
| One | do.      | 32 | " | English built.                        |     |
| One | do.      | 24 | " | French built.                         |     |
| One | do.      | 24 | " | Levant built, at sea.                 |     |
| One | Polacre, | 13 | " | Genoa built, at sea.                  |     |
| One | Brig,    | 20 | " | Built by Spanish constructor, at sea. |     |
| One | Zebec,   | 20 | " | Built by Spanish constructor.         |     |
| One | do.      | 12 | " | Built on the coast.                   | One |

This was the eighth year of ineffectual toil,—of plans and hopes defeated and disappointed. Besides a want of naval force the United States had to struggle against the intrigues of the Consuls of other powers at Algiers ;—they had good reason to rejoice at the exposed situation of our navigation. "If," said the Dey to the brother of the Swedish Consul, "I make peace with every body, what shall I do with my corsairs? What shall I do with my soldiers? They would take off my head for the want of other prizes, not being able to live upon their miserable allowance." We have met with a petition from the American captives to the House of Representatives, which from the singularity of being dated in Algiers and explaining some circumstances in their unhappy condition, we shall here insert at length:

"ALGIERS, December 29, 1793.

"To the Honourable House of Representatives of the United States of America.

"The humble petition of the American captives in Algiers, most humbly sheweth, that your petitioners had the misfortune to be captured by the corsairs of this regency in October and November last, whilst we were navigating vessels, belonging to citizens of the United States. That your petitioners and their crews are at present captives in this city of bondage, employed daily in the most laborious work without any respect to persons.

"That your most humble petitioners are informed, that the plague, that fatal and tremendous disorder, is raging in the country adjacent, and as your unfortunate petitioners are confined in two slave prisons with six hundred captives of other nations, that from their situation the wisdom of the United States will consider, what

One do. 14 guns Built on the coast.

One do. 12 " Built in Spain.

One brig on the stocks pierced for 20 guns will be launched and ready for sea in thirty days. N. B. They carry, each corsair, at the rate of twelve men to each gun fully.

Sixty Gun boats.

Oran has three galliotas, carrying 4 guns each.

Tunis, I am credibly informed, has twenty-three corsairs, mounting from 24 to 4 guns.

must be the fatal effects of the plague, spreading amongst the captives.

"That your petitioners return their country their sincere thanks for the provision allowed them by their worthy representative, Mr. Humphreys, which provision, in some degree, helps to alleviate somewhat our hard fate and sufferings, without which allowance our lives would be rendered much more burdensome and unhappy.

"That your petitioners pray you will take their unfortunate situation into consideration and adopt such measures, as will restore the American captives to their country, their friends, families and connexions, and your most humble petitioners will ever pray and be thankful."

About this time we perceive some intimation from our agent abroad of resorting to that form of negotiating with the Barbary corsairs, which time has fully proved to be really effectual ; the establishment of a naval force. The first extract is from a letter of Capt. O'Brien, the patriarch of the captives at Algiers, to the President of the United States dated in November 1793 ;—the last from a letter of Colonel Humphreys of the same year.

"Your Excellency will perceive, that the United States have at present no alternative, than to fit out with the greatest expedition thirty frigates and corsairs in order to stop those sea robbers in capturing American vessels. Fifteen of these vessels would be sufficient for a defensive war in order to guard the straits of Gibraltar and prevent the Algerine and Tunisian corsairs, even if combined, from visiting the western ocean, but in order to convince the Barbary states of the force and vigilance of American corsairs, it would be requisite the other fifteen American corsairs should be employed in the Mediterranean in order to destroy many of the corsairs of the Barbary states, and oblige them to make a peace on somewhat honourable terms with the United States.—But, if I may be allowed to offer an opinion, under the circumstances I have represented, and after what has happened, it appears absurd to trust to the fleets of Portugal or any other nation to protect and convoy our trade. *If we mean to have a commerce*, we must have a *naval force* (to a certain extent) to defend it. Besides, the very

*semblance of this would tend more towards enabling us to maintain our neutrality in the actual critical state of our affairs in Europe than all the declarations, reasonings, concessions, and sacrifices, that can possibly be made. Denmark, Sweden and even Genoa have as yet been able to avoid taking any hostile part, notwithstanding the apparent determination of the combined powers to the contrary. And I need not observe how much less in condition (from their population and other circumstances) to keep up a naval force some of those powers are than the United States."*

To the Corsair States this country is indebted for the early establishment of a navy during the administration of General Washington. On the 2d of January 1794, it was resolved in the house of representatives, "*that a naval force, adequate to the protection of the commerce of the United States against the Algerine corsairs, ought to be provided.*" In the same year the President was authorized to cause six frigates to be built, and to procure ten smaller vessels to be equipped as galleys. Three only of the frigates were completed, viz. the Constitution, United States and Constellation. Peace having been made with Algiers, congress directed that the surplus materials of a perishable nature, collected for the construction of the frigates, originally proposed, should be sold, reserving, however, sufficient for the building of one of 44 and one of 36 guns. The reason given for this arrangement was, that the primary cause, for which the frigates had been ordered, appeared to be attained. The foundation of the navy was, however, laid, though it continued for several years an unpopular institution. But it did not, after all, exempt the country from the long delayed dishonour of purchasing a treaty at an expense of 1,000,000 dollars, without including the annual tribute.\* Besides stipulating an annual tribute of 21,000

\* "ART. 1. From the date of the present treaty, there shall subsist a firm and sincere peace and amity between the President and citizens of the United States of North America, and Hassan Bashaw, Dey of Algiers, his divan and subjects; the vessels and subjects of both nations reciprocally treating each other with civility, honour and respect.

"ART. 2. Free trade with Algiers. Naval and military stores may be sold duty free.

"ART.

dollars in naval stores, the instrument is not so favourable.

"ART. 3. Vessels and effects to pass free.

"ART. 4. All ships of war belonging to this regency, on meeting with merchant vessels belonging to citizens of the United States, shall be allowed to visit them with two persons only beside the rowers; these two only permitted to go on board said vessel, without obtaining express leave from the commander of said vessel, who shall compare the passport, and immediately permit said vessel to proceed on her voyage unmolested. All ships of war belonging to the United States of North America, on meeting with an Algerine cruiser, and shall have seen her passport and certificate from the consul of the United States of North America, resident in this regency, shall be permitted to proceed on her cruise unmolested: no passport to be issued to any ships but such as are absolutely the property of citizens of the United States: and eighteen months shall be the term allowed for furnishing the ships of the United States with passports.

"ART. 5. No commander of any cruiser belonging to this regency, shall be allowed to take any person, of whatever nation or denomination, out of any vessel belonging to the United States of North America, in order to examine them, or under pretence of making them confess any thing desired; neither shall they inflict any corporal punishment, or any way else molest them.

"ART. 6. Stranded vessels to receive assistance. Goods wrecked free of duty.

"ART. 7. The Algerines not to sell vessels of war to enemies of the United States.

"ART. 8. Any citizen of the United States of North America, having bought any prize condemned by the Algerines, shall not be again captured by the cruisers of the regency then at sea, although they have not a passport; a certificate from the consul resident being deemed sufficient, until such time they can procure such passport.

"ART. 9. Barbary powers, at war with the United States, not to sell their prizes in Algerine ports, &c.

"ART. 10. American vessels may sell their prizes in ports of Algiers, &c.

"ART. 11. All ships of war belonging to the United States of North America, on anchoring in the ports of the regency, shall receive the usual presents of provisions and refreshment, gratis. Should any of the slaves of this regency make their escape on board said vessels, they shall be immediately returned: No excuse shall be made that they have hid themselves amongst the people and cannot be found, or any other equivocation.

"ART.

ble in regard to the necessity of passports, (article 12th)

"ART. 12. No citizen of the United States of North America shall be obliged to redeem any slave against his will, even should he be his brother: neither shall the owner of a slave be forced to sell him against his will: but all such agreements must be made by consent of parties. Should any American citizen be taken on board an enemy ship, by the cruisers of this regency, having a regular passport, specifying they are citizens of the United States, they shall be immediately set at liberty. On the contrary, they having no passport, they and their property shall be considered lawful prize; as this regency know their friends by their passports.

"ART. 13. Should any of the citizens of the United States of North America die within the limits of this regency, the dey and his subjects shall not interfere with the property of the deceased; but it shall be under the immediate direction of the consul; unless otherwise disposed of by will. Should there be no consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them; when they shall render an account of the property. Neither shall the dey or divan give hindrance in the execution of any will that may appear.

"ART. 14. No citizen of the United States of North America, shall be obliged to purchase any goods against his will; but, on the contrary, shall be allowed to purchase whatever it pleaseth him. The consul of the United States of America, or any other citizen, shall not be amenable for debts contracted by any one of their own nation; unless previously they have given a written obligation so to do. Should the dey want to freight any American vessel that may be in the regency, or Turkey, said vessel not being engaged, in consequence of the friendship subsisting between the two nations he expects to have the preference given him, on his paying the same freight offered by any other nation.

"ART. 15. Any disputes or suits at law, that may take place between the subjects of the regency, and the citizens of the United States of North America, shall be decided by the dey in person, and no other. Any disputes that may arise between the citizens of the United States, shall be decided by the consul, as they are in such cases not subject to the laws of this regency.

"ART. 16. Should any citizen of the United States of North America, kill, wound, or strike, a subject of this regency, he shall be punished in the same manner as a Turk, and not with more severity. Should any citizen of the United States of North America, in the above predicament, escape prison, the consul shall not become answerable for him.

"ART.

as that with Morocco. The expense of carrying this treaty into effect, were estimated as follows :

|                                                                                                                                            |           |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| " Payments stipulated at the time of closing the treaty to the Dey, his officers and treasury for the redemption of the captives . . . . . | \$525,500 |
| To which are to be added, agreeably to Mr. Donaldson's calculation . . . . .                                                               | 27,000    |
| Peace presents, consular presents, &c. . . . .                                                                                             | 60,000    |
| Commissions to the Jew broker and presents to principals, &c. . . . .                                                                      | 30,000    |
|                                                                                                                                            | <hr/>     |
| Amount of money to be paid in Algiers . . . . .                                                                                            | \$642,500 |

"ART. 17. The consul of the United States of North America shall have every personal security given him and his household: he shall have liberty to exercise his religion in his own house: all slaves of the same religion, shall not be impeded in going to said consul's house, at hours of prayer. The consul shall have liberty and personal security given him to travel wherever he pleases, within the regency: he shall have free license to go on board any vessel lying in our roads, whenever he shall think fit. The consul shall have leave to appoint his own drogoman and broker.

"ART. 18. Should a war break out between the two nations, the consul of the United States of North America, and all citizens, of said States, shall have leave to embark themselves and property, unmolested, on board of what vessels they shall think proper.

"ART. 19. Persons and property, captured on board enemy vessels, to be discharged.

"ART. 20. On a vessel of war, belonging to the United States of North America, anchoring in our ports, the consul is to inform the dey of her arrival: and she shall be saluted with twenty-one guns; which she is to return in the same quantity or number. And the dey will send fresh provisions on board, as is customary, gratis.

"ART. 21. The consul of the United States of North America shall not be required to pay duty for any thing he brings from a foreign country for the use of his house and family.

"ART. 22. Should any disturbance take place between the citizens of the United States and the subjects of this regency, or break any article of this treaty, war shall not be declared immediately; but every thing shall be searched into regularly; the party injured shall be made reparation.

"On



The expenses of remitting the sum, last mentioned, from London to Algiers according to the best estimate, which can be formed, will be as follows:

|                                                                                                                                                                |                |              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|--------------|
| \$140,000 procured at Leghorn by<br>bills on London cost 4s. 10 $\frac{1}{8}$<br>sterling per dollar or sterling                                               | £34,110        |              |
| \$260,000 expected to be obtained<br>at 5s.                                                                                                                    | 65,000         |              |
|                                                                                                                                                                | £99,110 or     | \$440,488,88 |
| \$40,000 remitted to Hamburg cost sterling<br>£9002 18 8 or dollars                                                                                            |                | 40,013,04    |
| \$225,000 procured in Lisbon for which<br>draughts have been passed for sterling<br>£50,007 16 0 or dollars                                                    |                | 222,256,89   |
| \$665,000 placed in Leghorn, Hamburg and<br>Lisbon and supposed to be sufficient to<br>discharge the pecuniary obligations of<br>the treaty will probably cost |                | 702,758,81   |
| Payments made to Col. Humphreys                                                                                                                                | £3471          |              |
| Payment to Capt O'Brian                                                                                                                                        | 31             |              |
|                                                                                                                                                                | sterling £3502 | 15,564,44    |

The naval stores, stipulated by Mr. Donaldson, were estimated at \$57,000, but which, agreeably to

"On the 21st of the Luna of Safer 1210, corresponding with the 5th of September 1795, Joseph Donaldson, jr. on the part of the United States of North America, agreed with Hassan Bashaw, dey of Algiers, to keep the articles contained in this treaty sacred and inviolable; which we, the dey and divan, promise to observe, on consideration of the United States paying annually the value of twelve thousand Algerine sequins in maritime stores. Should the United States forward a larger quantity, the overplus shall be paid for in money, by the dey and regency. Any vessel that may be captured, from the date of this treaty of peace and amity, shall immediately be delivered up on her arrival in Algiers.

"VIZIR HASSAN BASHAW.

"JOSEPH DONALDSON, Jr.

"Seal of Algiers, stamped at the foot  
of the original treaty, in Arabic."

|                                                                                                                                         |                     |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| his enumeration of the articles, will cost, agreeably to the estimate of the purveyor, marked (A)                                       | 124,413             |
| The freight of the said stores is computed at                                                                                           | 50,000              |
| The expense of the frigate lately promised, agreeably to the estimate of the Secretary of War, herewith transmitted, marked (B) will be | 99,727              |
| The whole expense of fulfilling the treaty, according to this estimate, therefore, is                                                   | <u>\$992,463,25</u> |

(A) An estimate of the probable cost of articles for the Algerine treaty. December 29, 1796.

|                                                      |                |
|------------------------------------------------------|----------------|
| 500 barrels of powder at £15                         | £7,500         |
| 66 tons of lead 40                                   | 2,640          |
| 20,000 cannon ball 276                               | 2,760          |
| 5,000 double headed shot                             | 690            |
| 200 pieces of canvas                                 | 1,100          |
| 2,000 gun barrels                                    | 2,000          |
| 50 masts at £100                                     | 5,000          |
| 100 spars 40                                         | 4,000          |
| 10 cables and cordage 45 tons at £135                | 10,575         |
| 3,000 pine and oak plank 6 inches thick—50 feet long | 9,000          |
| 200 pieces scantling                                 | 540            |
| 200 barrels tar                                      | 200            |
| 100 barrels pitch                                    | 150            |
| 10 cannon, &c.                                       | 500            |
|                                                      | <u>£46,655</u> |

Equal to \$124,413

(B) Estimate of the sum necessary to build and equip a frigate to carry 36 guns for the Dey of Algiers. To which is added an estimate of navigating the same to Algiers.

|                                                                                                                                      |             |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Carpenter's bill for building the hull, launching the same, together with a complete set of masts and yards, per ton                 | \$45        |
| Joiners, smiths, plumbers, boat builders, carvers, coopers, blockmakers, sail makers, riggers and rigging with ship Chandler's bills | <u>\$55</u> |

Ship complete of 538 tons per ton . \$100 is \$53,800

|                                                                                 |          |
|---------------------------------------------------------------------------------|----------|
| Copper sheathing . . . . .                                                      | 4,118 40 |
| Cannon . . . . .                                                                | 8,428 60 |
| Copper pintles and braces . . . . .                                             | 1,240    |
| Powder, shot and other military stores . . . . .                                | 13,551   |
| 40 men, including officers, their pay and subsistence for five months . . . . . | 8,589    |
| Contingencies . . . . .                                                         | 10,000   |
|                                                                                 | <hr/>    |
|                                                                                 | \$99,727 |

WAR OFFICE, Dec. 26, 1796.

An estimate of the probable cost and freight of the maritime stores, necessary for paying the first and second annuities to the Dey of Algiers.

|                                              |            |
|----------------------------------------------|------------|
| 1,000 barrels of powder . . . . .            | £15,000    |
| 2,000 pine and oak plank . . . . .           | 6,000      |
| 3,000 pine boards . . . . .                  | 4,500      |
| 2,000 pipe staves . . . . .                  | 50         |
| 100 doz, long tar brushes . . . . .          | 100        |
| 34 cables, 80 tons . . . . .                 | 10,800     |
| 10 coils white rope, 11,200 pounds . . . . . | 500        |
| 5 tons yarn . . . . .                        | 975        |
| 100 bolts canvas . . . . .                   | 550        |
| 3 tons lead . . . . .                        | 120        |
| 35 tons spikes . . . . .                     | 3,597 10   |
| 2,000 bomb shells . . . . .                  | 650        |
|                                              | <hr/>      |
|                                              | £42,842 10 |

|                                             |                                     |
|---------------------------------------------|-------------------------------------|
|                                             | Equal to \$114,246 $\frac{83}{100}$ |
| To transport the above to Algiers . . . . . | 30,000                              |
|                                             | <hr/>                               |
|                                             | \$144,246 $\frac{83}{100}$          |

“TENCH FRANCIS, Purveyor.

“December 29, 1796.”

It is not necessary to say more on this unfortunate affair. Some of our citizens had been suffering the worst species of captivity, and our trade exposed to the worst species of depredation for ten years. The delay in rescuing those unhap-

py men, or in protecting a valuable commerce, saved, in the end, neither the money nor the honour of the nation.

Shortly after the treaty we find the Dey on very civil terms with the United States. He advanced money for the peace with Tripoli, and pledged his Ottoman word for that with Tunis. He was, also, indulged with the great favour, about this time, of building two frigates in our ship yards of live oak and cedar, which the United States were at the trouble and expense of navigating to Algiers. Besides vessels of war, furnished at different periods, the government sent, for seventeen years, an annual tribute of naval and military stores equal, in value, to 21,000 dollars. We believe the different civilized nations of the world have very little to say in justification of their conduct in putting into the hands of the pirate states the constant and effectual means of committing depredations ;—those governments obviously having the greatest cause of self-reproach, that possessed the most ample sources of protection. With the exception of one or two transactions, our affairs went on quietly till a second declaration of war in 1812 by that Regency.

The relations with the Barbary powers, differing entirely from those with Europe, we have allowed ourselves a greater freedom in narrating them, and we shall now pause for a moment from the direct course of this relation, for the purpose of taking a brief notice of one of the events (just alluded to) of a singular character. In October 1800, the Dey signified to the consul his intention of sending an ambassador to the Porte, with the customary presents, in the Washington, a small American frigate, at that time lying in the harbour of Algiers. It may well be imagined that the proposal was an awkward and offensive one. The United States had neither consul nor minister at Constantinople, nor any sort of treaty with any of the Italian states, with some of whom Algiers was then at war. On the other hand, the consul and the captain of the frigate were entirely without orders on the subject of transporting presents, and could not, in any way, be responsible, that the property on board would be safe from capture. To the representations, both judicious

and reasonable, made on this occasion, the Dey threatened war, plunder, and captivity, and declared, he had selected the *Washington* to transport the embassy as a special compliment to the United States, declining to confer the honour upon a British vessel, with whose nation he was at the time angry. The proclamation of his Highness' pleasure was farther accompanied with another proposal, also, of an embarrassing nature ;—to hoist the piratical flag of the Algerines at the main top gallant mast head of the frigate. It was in vain the barbarian was informed, that the act would throw the frigate out of commission ; neither the Dey nor his minister of marine would curtail a tithe of the demand, and this Corsair flag, bearing the turbanned head of Hali, was run up to the main with a salute of seven guns ;—a compliment that cost the United States 40,000 dollars. It probably prevented depredations, and the *Washington*, after dropping her anchor opposite the seven towers, had the honour of hoisting the first American union in the Thracian Bosphorus.

It is now more than fifty years since this nation became sovereign and independent, and, during all that time, the only power, Christian, Mohammedan or Pagan, that has formally declared a war against her, has been the Corsair state of Algiers,—an act, that will probably not be repeated. In the exact proportion of the progress of this people in power and wealth have been the vigour and spirit, with which they have resisted and spurned the unprincipled demands of the Barbary pirates. We began with money, offering, small as was the sum, more than we could afford. In this way, these banditti have wrung several millions of dollars from us. At last, we have fallen on the true scent. And in detailing the transactions, that led to the present peace with Algiers, the reader will probably be satisfied, that little farther molestation need be apprehended from that quarter.

The Dey had, in reality, the same reason for declaring the last war as that of 1785 ; his funds were at a low ebb, and he received, from all quarters, reports of the extensive and wealthy American commerce afloat, without protection, as

well as without suspicion of danger. The pretext of the war was an allegation, that stores, stipulated by the treaty of '95, had not been faithfully and exactly delivered. The Alleghany, that arrived with the tribute in the summer of 1812 had brought but 50 small barrels of gunpowder and four small cables, whereas the Dey had sent to the United States in 1810 for very large cables and 500 quintals of powder. This was one cause of grievance. And as the Dey observed to the consul, though "he always stipulated for the large descriptions, the United States sent the small." The consul and Hasnaggee, also, differed as to the amount of tribute due. According to the consul \$15,826,—according to the minister of marine \$27,000, a difference easily explained. The tribute being an annual one, the Hasnaggee reckoned by the Mohammedan calendar of 354 days to a year. In seventeen years, viz. from Sept. 5, 1795 to Sept. 5, 1812, this made half a year in favour of the Algerine computation. And, then by the aid of round numbers, a favourite method of squaring an account, practised in the East by the strongest party, he succeeded in making out the gross 27,000 dollars. The consul was compelled to borrow this money at a heavy advance, and was then ordered, at a notice of a few hours, to depart with his family in the Alleghany, whose cargo the Dey refused to receive. Shortly before the departure of the consul, the whole Algerine squadron sailed on a cruise under the command of the admiral, Rais Hammida, whose character and history are thus related.

"He is a bold, active, enterprising commander, but entirely unacquainted with any regular mode of fighting; he has not the advantage of being a Turk, or even an Algerine by birth, and his advancement, which has been owing entirely to his activity, enterprise and singular good fortune, has excited the jealousy and hatred of the other commanders, who are far inferior to him in point of talents; but he is much beloved by the sailors (if such they may be called who go out in cruisers). He is an Arab of the mountains, of one of the tribes of Carbiles; he came to Algiers when a boy, to seek a livelihood, as is the custom of those people, and going out in one of the cruisers, he became attached to that

mode of life, and has risen to his present rank. He is about forty years old."

At the time the consul, Mr. Lear, left Algiers, the United States had paid, in tribute in seventeen years to that Regency, \$378,363.

The Dey, in venturing upon this piratical expedition, was unfortunate in selecting his time. There was then but little American navigation afloat, this country having, a month previous, published a manifest of war against Great Britain, and which had been preceded by several years of a restrictive system. A small brig, with a crew of eleven persons, was the only prize that fell into the jaws of the Dey's cruisers.

After the treaty of peace with England, Congress declared war against Algiers, and a naval force, under Commodore Bainbridge, was despatched to the Mediterranean. Mr. Shaler, at present consul general of the United States at Algiers, a firm, resolute and judicious man, who has rendered valuable services to this country on the Barbary coast, embarked in the first division of the squadron. They arrived early in June, and having captured an Algerine frigate and brig of war, suddenly appeared before Algiers, at a moment when all the cruisers were at sea, and delivered, for the consideration of the Divan, the terms on which they were commissioned to make peace, together with a letter from the President to the Dey.

*"The American Commissioners to the Dey of Algiers.*

"The undersigned have the honour to inform his Highness, the Dey of Algiers, that they have been appointed by the President of the United States of America, commissioners to treat of peace with his Highness, and that, pursuant to their instructions, they are ready to open a negotiation for the restoration of peace and harmony between the two countries, on terms just and honourable to both parties; and they feel it incumbent upon them to state explicitly to his Highness, that they are instructed to treat upon no other principle, than that of perfect equality, and on the terms of the most favoured nations. No stipulation for paying any tribute to Algiers under any form whatever, will be agreed to.

"The undersigned have the honour to transmit, herewith, a letter from the President of the United States; and they avail themselves of this occasion to assure his Highness of their high consideration and profound respect.

[Signed]

"WILLIAM SHALER,  
"STEPHEN DECATUR.

"U. S. ship *Guerriere*,  
Bay of Algiers, 29th June 1815."

"James Madison, President of the United States, to his Highness the Dey of Algiers.

"Your Highness having declared war against the United States of America, and made captives of some of their citizens, and done them other injuries without cause, the Congress of the United States at its last session authorized by a deliberate and solemn act, hostilities against your government and people. A squadron of our ships of war is sent into the Mediterranean sea, to give effect to this declaration. It will carry with it the alternative of peace or war. It rests with your government to choose between them. We persuade ourselves that your Highness, contrasting the miseries of war, with the advantages resulting from a friendly intercourse with a rising nation, will be disposed to return to those amicable relations which had so long subsisted between our two countries, and thus meet the views of this government, whose leading principle is peace and friendship with all nations. But peace, to be durable, must be founded on stipulations equally beneficial to both parties, the one claiming nothing which it is not willing to grant to the other; and on this basis alone will its attainment or preservation by this government be desirable.

"I have authorized William Shaler, one of our distinguished citizens, and Commodore Bainbridge and Commodore Decatur, commanders of the fleet, to conclude a peace with your Highness. They will send this letter to you. I make this communication from a sincere desire that the honourable opportunity which it affords to your Highness to prefer peace to war will be improved.

"Written at the city of Washington, this twelfth day of April, A. D. 1815.

[Signed]

"JAMES MADISON.

"By the President.

[Signed]

"JAMES MONROE, Secretary of State."



Confounded by the sudden and entirely unexpected appearance of this force, the Algerines agreed, on the 30th of June, to the proposals of a treaty, almost without a discussion. A difficulty having arisen in the execution of the stipulations of this instrument, the consul retired from Algiers. On this occasion, the Dey wrote the following letter to the President. His Highness' knowledge of our form of government does not appear to have been as accurate as his disposition was courteous and amiable.

[TRANSLATION.]

"With the aid and assistance of Divinity, and in the reign of our sovereign, the asylum of the world, powerful and great monarch, transactor of all good actions, the best of men, the shadow of God, director of the good order, king of kings, supreme ruler of the world, emperor of the earth, emulator of Alexander the Great, possessor of great forces, sovereign of the two worlds and of the seas, king of Arabia and Persia, emperor, son of an emperor and conqueror, Mahmoud Khan (may God end his life with prosperity, and his reign be everlasting and glorious), his humble and obedient servant, actual sovereign governor and chief of Algiers, submitted forever to the orders of his Imperial Majesty's noble throne, Omar Pashaw (may his government be happy and prosperous.)

"To his Majesty, the Emperor of America, its adjacent and dependent provinces and coasts, and wherever his government may extend, our noble friend, the support of the kings of the nation of Jesus, the pillar of all Christian sovereigns, the most glorious amongst the princes, elected amongst many lords and nobles, the happy, the great, the amiable James Madison, Emperor of America (may his reign be happy and glorious, and his life long and prosperous) wishing him long possession of the seal of his blessed throne, and long life and health, Amen. Hoping that your health is in good state, I inform you that mine is excellent, thanks to the Supreme Being, constantly addressing my humble prayers to the Almighty for your felicity.

"After many years have elapsed, you have at last sent a squadron, commanded by Admiral Decatur, your most humble servant, for the purpose of treating of peace with us. I received the letter of which he was the bearer, and understood its contents; the

enmity which was between us having been extinguished, you desired to make peace as France and England have done. Immediately after the arrival of your squadron in our harbour, I sent my answer to your servant the Admiral, through the medium of the Swedish consul, whose proposals I was disposed to agree to, on condition that our frigate and sloop of war, taken by you, should be returned to us, and brought back to Algiers; on these conditions we would sign peace according to your wishes and request. Our answer having thus been explained to your servant the Admiral by the Swedish consul, he agreed to treat with us on the above mentioned conditions; but having afterwards insisted upon the liberation of all American citizens, as well as upon a certain sum of money, for several merchant vessels made prizes of by us, and of other objects belonging to the Americans, we did not hesitate a moment to comply with his wishes, and in consequence of which we have restored to the said Admiral, your servant, all that he demanded from us. In the mean time, the said Admiral having given his word to send back our two ships of war, and not having performed his promise, he has thus violated the faithful articles of peace which were signed between us, and by so doing a new treaty must be made.

"I inform you, therefore, that a treaty of peace having been signed between America and us, during the reign of Hassan Pashaw, twenty years past, I propose to renew the said treaty on the same basis stipulated in it, and if you agree to it, our friendship will be solid and lasting.

"I intended to be on higher terms of amity with our friends the Americans than ever before, being the first nation with whom I made peace; but as they have not been able to put into execution our present treaty, it appears necessary for us to treat on the above mentioned conditions. We hope that with the assistance of God you will answer this our letter, immediately after you shall have a perfect knowledge of its contents. If you agree, according to our request, to the conditions specified in the said treaty, please to send us an early answer. If on the contrary, you are not satisfied with my propositions, you will act against the sacred duty of man, and against the laws of nations.

"Requesting only that you will have the goodness to remove your consul as soon as possible, assuring you that it will be very

agreeable to us, these are our last words to you, and we pray God to keep you in his holy guard.

"Written in the year of the Hegira 1231, the 20th day of the moon Dge Mazirl Covel, corresponding to 1815, April 24th.—Signed in our well beloved city of Algiers.

[Signed]

"OMAR, son of Mohammed,  
Conqueror and Great."

But after the bombardment of Algiers in 1816, and a squadron having arrived off that city under Commodore Chauncey, no important obstacle existed to the renewal of the treaty, which was signed on the 23d December of the same year.\*

\* "The President of the United States and the Dey of Algiers, being desirous to restore and maintain, upon a stable and permanent footing the relations of peace and good understanding between the two powers, and for this purpose to renew the treaty of peace and amity which was concluded between the two states by William Shaler and Commodore Stephen Decatur, as commissioners plenipotentiary on the part of the United States, and his Highness Omar Bashaw, Dey of Algiers, on the 30th June 1815:

"The President of the United States having subsequently nominated and appointed, by commission, the above named William Shaler and Isaac Chauncey, commodore and commander in chief of all the naval forces of the United States in the Mediterranean, commissioners plenipotentiary to treat with his Highness the Dey of Algiers, for the renewal of the treaty aforesaid; and they have concluded, settled and signed, the following articles:

"ART. 1. Peace and friendship. Favours in navigation and commerce granted to other nations, to be common to each, &c.

"ART. 2. It is distinctly understood between the contracting parties that no tribute, either as biennial presents, or under any other form or name whatever, shall be required by the Dey and Regency of Algiers from the United States of America, on any pretext whatever.

"ART. 3. [The Dey of Algiers shall cause to be immediately delivered up to the American squadron now off Algiers, all the American citizens now in his possession, amounting to ten, more or less; and all the subjects of the Dey of Algiers, now in possession of the United States, amounting to five hundred, more or less, shall be delivered up to him; the United States, according to the usages of civilized nations, requiring no ransom for the excess of prisoners in their favour.]

Having now finished an account of the relations of this country with Algiers, the most mischievous, abandoned and powerful of the Barbary powers, and having seen the Unit-

"ART. 4. [A just and full compensation shall be made by the Dey of Algiers to such citizens of the United States as have been captured and detained by Algerine cruisers, or who have been forced to abandon their property in Algiers, in violation of the twenty-second article of the treaty of peace and amity, concluded between the United States and the Dey of Algiers, on the fifth of September, one thousand seven hundred and ninety-five.]

"[And it is agreed between the contracting parties, that in lieu of the above, the Dey of Algiers shall cause to be delivered forthwith into the hands of the American consul residing at Algiers, the whole of a quantity of bales of cotton left by the late consul general of the United States in the public magazines in Algiers: and that he shall pay into the hands of the said consul the sum of ten thousand Spanish dollars.]

"ART. 5. Enemies' property to pass free in the vessels of each party.

"ART. 6. Citizens or subjects taken on board enemy vessels to be liberated; and American citizens and property not to be held captive, or detained on any account.

"ART. 7. Proper passports shall immediately be given to the vessels of both the contracting parties, on condition that the vessels of war belonging to the regency of Algiers, on meeting with merchant vessels belonging to the citizens of the United States of America, shall not be permitted to visit them with more than two persons besides the rowers; these only shall be permitted to go on board without first obtaining leave from the commander of said vessel, who shall compare the passport, and immediately permit said vessel to proceed on her voyage; and should any of the subjects of Algiers insult or molest the commander, or any other person on board a vessel so visited, or plunder any of the property contained in her, on complaint being made by the consul of the United States residing in Algiers, and on his producing sufficient proof to substantiate the fact, the commander or rais of said Algerine ship or vessel of war, as well as the offenders, shall be punished in the most exemplary manner.

"All vessels of war belonging to the United States of America, on meeting a cruiser belonging to the regency of Algiers, on having seen her passports and certificates from the consul of the United States residing in Algiers, shall permit her to proceed on her cruise unmo-

ed States, after twenty-five years of tribute, or idle negotiation, at length shake off, by main force, the odious, debasing bondage, inflicted by that regency, we shall devote a single

lest and without detention. No passport shall be granted to either party to any vessels, but such as are absolutely the property of citizens or subjects of the said contracting parties, on any pretence whatever.

"ART. 8. Certificates of condemnation and bill of sale sufficient passport for six months in case of purchase of prizes.

"ART. 9. Provisions to be furnished to the vessels of each party in ports of the other at market price. In case of repair, cargoes may be landed without duty; but no compulsion to land cargoes.

"ART. 10. When vessels are cast ashore in the territory of either party, assistance to be given to the crews and protection to the property.

"ART. 11. Vessels of either party to be protected within cannon shot, and in port; and an enemy not permitted to pursue within twenty-four hours.

"ART. 12. Commerce, protection to merchants, rights of establishing consuls, &c. on the footing of the most favoured nations.

"ART. 13. Consuls of the United States not responsible for debts of citizens, unless they give previously written obligations.

"ART. 14. On a vessel or vessels of war belonging to the United States anchoring before the city of Algiers, the consul is to inform the dey of her arrival, when she shall receive the salutes which are, by treaty or custom, given to the ships of war of the most favoured nations on similar occasions, and which shall be returned gun for gun; and if after such arrival, so announced, any christians whatever, captives in Algiers, make their escape and take refuge on board any of the said ships of war, they shall not be required back again, nor shall the consul of the United States, or commanders of said ships be required to pay any thing for the said christians.

"ART. 15. As the government of the United States of America has, in itself, no character of enmity against the laws, religion, or tranquillity of any nation, and as the said states have never entered into any voluntary war, or act of hostility, except in defence of their just rights on the high seas, it is declared by the contracting parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony between the two nations; and the consuls and agents of both nations shall have liberty to celebrate the rites of their respective religions in their own houses.

paragraph to the conditions, by which the commerce of other nations are regulated.

In 1816, after the bombardment by the allied squadron,

"The consuls, respectively, shall have liberty and personal security given them to travel within the territories of each other, by land and sea, and shall not be prevented from going on board any vessels they may think proper to visit: they shall likewise have the liberty to appoint their own drogoman and broker.

"ART. 16. In case of dispute arising from violation of this treaty, the grievances to be stated and three months allowed for an adjustment of differences, &c. If war ensues, consuls, citizens and subjects to be permitted to embark unmolested, &c.

"ART. 17. If, in the course of events, a war should break out between the two nations the prisoners captured by either party shall not be made slaves, they shall not be forced to hard labour, or other confinement than such as may be necessary to secure their safe keeping, and shall be exchanged rank for rank; and it is agreed that prisoners shall be exchanged in twelve months after their capture, and the exchange may be effected by any private individual legally authorized by either of the parties.

"ART. 18. Powers at war with the United States, not to be suffered to sell American captured vessels at Algiers; but the vessels of war of the United States may sell their prizes at Algiers, &c.

"ART. 19. Consul of the United States to decide disputes between American citizens, &c. Other disputes to be settled by the consuls or agents of the nations to which the parties belong.

"ART. 20. If a citizen of the United States should kill, wound, or strike a subject of Algiers, or, on the contrary, a subject of Algiers should kill, wound or strike a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial; but the sentence of punishment against an American citizen shall not be greater or more severe than it would be against a Turk in the same predicament; and if any delinquent should make his escape, the consul shall not be responsible for him in any manner whatever.

"ART. 21. Consul of the United States not to pay duties on domestic articles.

"ART. 22. Should any of the citizens of the United States of America die, within the Regency of Algiers, the dey and his subjects shall not interfere with the property of the deceased, but it shall be under the immediate direction of the consul, unless otherwise disposed of

christian slavery ceased in Algiers, the United States having the honour to be the first nation to abolish, in 1815, the custom of presents and tributes. That nation, together with Great Britain, France, Sardinia and Holland have at present independent treaties with the regency, and pay no tribute under any form. Naples, Sweden, Denmark and Portugal pay 24,000 dollars annually. It is, therefore, clear, that these pirates are already deprived of far the most abundant and richest part of their plunder, and, in the course of a few years, will, no doubt, disappear.

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### TRIPOLI.

Tripoli possesses great interest, as being the scene of some of the gallant as well as earliest exploits of the navy, not, perhaps, estimated according to their just merit, for unfortunately, at that period, a slight prejudice on that subject, pervaded some portions of this country. Actions of a more recent date, and in their results more important, have thrown into a comparative obscurity, those maiden but brilliant achievements. In November 1796, a treaty of friendship was made by Joel Barlow with Tripoli under the authority of David Humphreys, minister of the United States at the court of Lisbon.\* No American vessel had at this

by will. Should there be no consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them, when they shall render an account of the property; neither shall the dey or his subjects, give hindrance in the execution of any will that may appear.

“Done at the palace of the government, in Algiers, on the 22d day of December 1816, which corresponds to the third of the Moon Safar, year of the Hegira 1232.”

\* “ART. 1. There is a firm and perpetual peace and friendship between the United States of America, and the bey and subjects of Tripoli, of Barbary, made by the free consent of both parties, and guaranteed by the most potent dey and regency of Algiers.

“ART. 2. If any goods belonging to any nation with which either

time been taken by a Tripolian cruiser. This treaty was under the guaranty of the Dey of Algiers, and he advanced the money,\* acknowledged to be a satisfactory considera-

of the parties is at war, shall be loaded on board of vessels belonging to the other party, they shall pass free, and no attempt shall be made to take or detain them.

"ART. 3. If any citizens, subjects or effects, belonging to either party, shall be found on board a prize vessel taken from an enemy by the other party, such citizens or subjects shall be set at liberty, and the effects restored to the owners.

"ART. 4. Vessels of both parties to be furnished with passports, etc.

"ART. 5. Prize vessels bought by citizens or subjects of either party, allowed a year to procure regular passports.

"ART. 6. Provisions. Repairs. Landing cargoes.

"ART. 7. Stranded vessels. No pillage, etc.

"ART. 8. If a vessel of either party should be attacked by an enemy, within gunshot of the forts of the other, she shall be defended as much as possible. If she be in port, she shall not be seized or attacked, when it is in the power of the other party to protect her; and when she proceeds to sea no enemy shall be allowed to pursue her, from the same port, within twenty-four hours after her departure.

"ART. 9. Commerce, etc. on the most favoured footing.

"ART. 10. The money and presents demanded by the bey of Tripoli, as a full and satisfactory consideration on his part, and on the part of his subjects, for this treaty of perpetual peace and friendship, are acknowledged to have been received by him previous to his signing the same, according to a receipt which is hereto annexed; except such part as is promised, on the part of the United States; to be delivered and paid by them on the arrival of their consul in Tripoli, of which part a note is likewise hereunto annexed. And no pretence of any periodical tribute, or farther payment, is ever to be made by either party.

"ART. 11. As the government of the United States of America, is not, in any sense, founded on the christian religion; as it has, in itself, no character of enmity against the laws, religion or tranquillity of Musselmen; and as the said states never have entered into any war or act of hostility against any mahometan nation; it is declared by the parties, that no pretext arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries.

"ART.

\* \$48,000 in cash—\$8,000 in presents.



tion. We have but a single observation to make on this instrument, and that in relation to the eleventh article, which will be found in the note. There is, perhaps, not a civilized state in the world where so large a portion of the inhabitants are christians as this country. The children of Jacob are so few, that their proportion to the rest of the population hardly admits of a calculation. Having made this remark, we are embarrassed to understand, not the meaning, but the object of the eleventh article. A Jew, Turk or Hindoo, Atheist or the Heathen may hold any office of trust, honour or profit under the federal constitution. But if the government of this country is not founded on the christian religion, on what religion is it founded? With the same justice, it might be said, that our civil institutions are not founded on good morals and good education, not more important, surely, than religion. In the hands of the people, religion is not an instrument, employed for sectarian purposes, nor is our republican form of government made an instrument for the political conversion of other people. The politics of

"ART. 12. No appeal to arms in case of a dispute concerning a violation of this treaty, etc. The consul failing to settle disputes, amicable reference to be made to the dey of Algiers.

"Signed and sealed at Tripoli, of Barbary, the 3d day of Jumad, in the year of the Hegira 1211; corresponding with the 4th day of November 1796; by

[L. s.] JUSSUF BASHAW MAHOMET, *bey*.

[L. s.] MAMET, *treasurer*.

[L. s.] AMET, *minister of marine*.

[L. s.] AMET, *chamberlain*.

[L. s.] ALLY, *chief of the divan*.

[L. s.] SOLIMAN, *kaya*.

[L. s.] GALIL, *general of the troops*.

[L. s.] MAHOMET, *commandant of the city*.

[L. s.] MAMET, *secretary*.

"Signed and sealed at Algiers, the 4th day of Argil 1211; corresponding with the 3d day of January 1797; by

[L. s.] HASSAN BASHAW, *dey*.

And by the agent plenipotentiary of the United States of America,

[L. s.] JOEL BARLOW."

the Pashaw of Tripoli would be quite as safe in the keeping of the Americans as his religious faith. The Turkish government is an ecclesiastical one ; that of the United States is not only not so, but it does not even resemble the European in having a hierarchy connected with it. Still, we are a christian people, and that religion, though not a political instrument, is, nevertheless, a necessary and principal element in our society. It would seem a much more reasonable and judicious stipulation, if the American agent had satisfied himself with providing freedom of worship for the consul and his family.

The Pashaw did not, however, pay much attention to this, or any other provision of the treaty. In less than three years (April '99) the consul was ordered to leave Tripoli, and so strong in this country was the expectation of war, that a small squadron was despatched to the Mediterranean. The corsair states make but one complaint ;—the want of money. Sidi Youssouf was offended, at not being so well paid as the Algerines. But the second year of the treaty he had received 12,000, and the third 22,000 dollars, though under that instrument, he was not entitled to a single sequin. "All nations pay me," he said, "so must the Americans. Why do they neglect me in their donations ? Let them give me a stipulated sum annually, and I will be reasonable as to the amount." War was soon after declared, and we cannot do better than give in the consul's words, the rude but rather emphatic form these people have of making public that solemn state of things.

"This evening (10 May) at 6 P. M. Hadgi Mahamude, the same that went to Algiers in the Hamdullah, came to the American house, and told me not to be alarmed, for the Pashaw had sent him to inform me, that he declared war against the United States, and would take down our flagstaff on Thursday the 14th instant, that if I pleased to remain at Tripoli, I should be treated with respect, but if I pleased, I might go away. I sent my compliments to the Pashaw, and informed him, that it was my positive instructions not to remain an instant after a declaration of war took place, and that I should charter a vessel to-morrow, if possible.

"Thursday 14th at 1 P. M. Hadgi Mahamude came to inform me, that the Chous were coming to take our flagstaff down. I waited until the Seraskier arrived, and then sent to offer him 10,000 dollars, in addition to what I had already offered, which was rejected by the Pashaw, and orders given to cut away the flagstaff.

"At quarter past 2, they effected the grand achievement, and our flagstaff was chopped down six feet from the ground, and left reclining on the terrace. Thus ends the first act of this tragedy. I hope the catastrophe may be happy."\*

\* In a protest, entered in the chancery of his consulate, Mr. Cathcart, among other items of complaint, mentions the following:—  
 "Second, be it known, that in the month of October 1799, James Leander Cathcart, consul for the United States of America in this regency, having received several bales of cloth to dispose of, that said Joussouf Pashaw sent the broker Leon Farfara to the consular house, requesting said consul to give him the preference in the sale of said cloth, promising to pay for the same like any other individual, and as cloths were sold of the same quality. I, knowing how he had served the late Venetian and Swedish consuls on a similar occasion, sent said Leon Farfara to inform him, that the cloth was not mine, and that I expected to be paid immediately in order to be enabled to make a remittance to my correspondent, which he the said Pashaw promised to do; I, therefore, confiding in his promise, which I was taught to believe was sacred to all true Mussulmen, and more especially to a prince of the august family of Caramaely, did deliver unto him sundry pieces of cloth to the value of five thousand seven hundred and eighty-seven yuslicks, current gold of this regency, which at that time was worth Spanish dollars two thousand three hundred and fourteen, and eighty cents. That I have repeatedly demanded the above sum, and have always been put off from time to time with promises, until the 22d day of September 1800, when some oil, belonging to the said Pashaw, being selling at public vendue, I sent my drogoman to purchase a barrel for the use of my house, value about eighteen dollars, which the hasnader refused to give unto him, unless I sent the money to pay for it first. I sent my drogoman immediately to the Pashaw to know the reason, who repeated the same words, saying the oil was not his, but belonged to the crew of the cruisers, that if I wanted oil, I must first send the cash. I immediately sent for Farfara, who had acted as broker in the sale of the cloth, and desired him to demand a positive answer from the Pashaw, whether he intended to pay me or not—that I was resolved to be kept no longer in suspense, and offered to take

This last war with Tripoli is remarkable for an expedition, somewhat romantic in its character, from Alexandria in Egypt across the desert of Lybia to Tripoli, a distance of a thousand miles. It was undertaken by William Eaton, a native of the State of Connecticut ; to say the least, a brave, resolute man, endowed with an enterprising disposition, and, by no means, destitute of a certain description of talent. He had been a captain in the army and was subsequently employed as consul at Tunis. Mr. Eaton was appointed in May 1804 navy agent for the Barbary regencies with a salary of 1200 dollars, the rations of a navy lieutenant, and with directions to obey the orders of Commodore Barron. Hamet, ex-Pashaw of Tripoli, having been dethroned by his younger brother Jousowf, the object of Mr. Eaton's appointment was to obtain his cooperation in the war. This is explained in a letter from the secretary of the navy to Commodore Barron.

"With respect to the ex-pashaw of Tripoli, we have no objection to your availing yourself of his cooperation with you against Tripoli, if you shall, upon a full view of the subject after your arrival upon the station, consider his cooperation expedient. The subject is committed entirely to your discretion. In such an event you will, it is believed, find Mr. Eaton extremely useful to you."

Commodore Barron was, therefore, fully authorized by the secretary of the navy to obtain the cooperation of Hamet, and that he believed, it would be for the benefit of the service, cannot be doubted, after the verbal orders given the 15th Sept. 1804 to Captain Hull, a copy of which was signed by that officer and Mr. Eaton. They are in these words :

"The *written orders*, I here hand you, to proceed to the port of the money at the present value, which is only 1929 dollars in full of all demands ; the Pashaw sent the same answer, which he had sent above fifty times before, that he would pay me, but at present it was not convenient and desired Leon Farfara to inform me, that if I had a mind, I might take one of the Swedish prizes for my money, which I declined."

Alexandria or Smyrna, for conveying to Malta, any vessels you may find there, are intended to disguise the real object of your expedition, which is to proceed with Mr. Eaton to Alexandria in search of Hamet Pashaw, the rival brother and legitimate sovereign of the reigning Pashaw of Tripoli, and to convey him and his suite to Derne, or such other place on the coast, as may be determined the most proper for cooperating with the naval force under my command against the common enemy, or, if more agreeable to him, to bring him to me before Tripoli.

"Should Hamet not be found at Alexandria, you have the discretion to proceed to any other place for him, where the safety of your ship can be, in your opinion, relied upon.

"The Pashaw may be assured of the support of my squadron at Bengazi or Derne, where you are at liberty to put in, if required, and if it can be done without too great risk. And you may assure him, also, that I will take the most effectual measures, with the forces under my command for cooperating with him against the usurper, his brother, and for reestablishing him in the regency of Tripoli. Arrangements to this effect are confided to his discretion, with which Mr. Eaton is vested by the government."

Mr. Eaton, with his commissions and other instructions in his pocket, proceeded to Alexandria in the *Argus*;—with some difficulty he found Hamet, who was with the Mameluke Beys in upper Egypt. And early the next spring, with a small force, arrived before Derne, the capital of a province of that name, about half way to Tripoli. This town was taken by assault, in April 1805, with some show of spirit and gallantry. Before, however, leaving Alexandria, he concluded with Hamet a convention in the nature of a treaty of alliance, though he does not appear to have been invested with any authority to enter into such an arrangement on the part of the United States. At the same time, if the expedition had met with success, the transaction would have been highly favourable. Mr. Eaton made several reports from Egypt to Commodore Barron of his progress, &c. and requested to be supplied with certain stores. We extract a paragraph or two from the Commodore's answer from Malta, March 22, 1805 :

"I cannot but applaud the energy and perseverance, that have characterised your progress through a series of perplexing and discouraging difficulties to the attainment of the object of your research, an attainment, which I am disposed to consider as a fair presage of future success.

"On the receipt of these communications by Captain Hull, I did not lose a moment in making the necessary arrangement for sending you succours, and I now despatch the Argus brig, with the Hornet sloop under her convoy, carrying a variety of stores and provisions, according to the accompanying list. Captain Hull will shape his course for Bombay direct, where he calculates on finding you with the Pashaw and his army, and where he supposes you will make a stand. I have directed him to deliver these stores to you to be applied, as your discretion may direct. He has, also, under his charge a sum in specie, amounting to 7000 dollars, which is likewise to be placed at your disposal."———"You must be sensible, that in giving their sanction to a cooperation with the exiled Pashaw, government did not contemplate the measure, as leading necessarily and absolutely to a reinstatement of that Prince in his rights on the regency of Tripoli. They appear to have viewed the cooperation in question, as a means, which if there existed energy and enterprise in the exile, and attachment to his person on the part of his former subjects, might be employed to the common furtherance and advantage of his claims and our cause, but without meaning to fetter themselves by any specific and definite attainment, as an end, which the tenor of my instructions and the limited sum, appropriated for that special purpose, clearly demonstrate. I fear by the convention you are about to enter into with Hamet, and by the complexion of other measures, that a wider range may have been taken than is consistent with the powers, vested in me for that particular object. These apprehensions may, perhaps, prove groundless on further representations from you, but under my present impressions, I feel it my duty to state explicitly, that I must withhold my sanction or agreement, committing the United States, or tending to impress upon Hamet a conviction that we have bound ourselves to place him upon the throne."

While the expedition was detained at Derne for a want of men and supplies, Mr. Lear, on some intimations he had re-

ceived, went to Tripoli and concluded a peace with the Pashaw, precipitate, because 60,000 dollars were paid, because all admitted the cooperation was beginning to be seriously felt, and because it was determined to withhold supplies from Eaton only a few days after intelligence had been received, that he was in possession of Derne, and before any attempt could be made, for the want of them, to push the enterprise forward.\* Hamet, afterwards, came to this coun-

\* "ART. 1. Firm and inviolable peace, on terms of the most favoured nation. Favours granted to other nations by one party, to be common to the other; free, if freely allowed; otherwise, as the parties may agree.

"ART. 2. The bashaw of Tripoli shall deliver up to the American squadron now off Tripoli, all the Americans in his possession; and all the subjects of the bashaw of Tripoli, now in the power of the United States of America, shall be delivered up to him; and as the number of Americans in possession of the bashaw of Tripoli amounts to three hundred persons, more or less, and the number of Tripoline subjects in the power of the Americans to about one hundred, more or less, the bashaw of Tripoli shall receive from the United States of America the sum of sixty thousand dollars, as a payment for the difference between the prisoners herein mentioned.

"ART. 3. All the forces of the United States, which have been, or may be, in hostility against the bashaw of Tripoli, in the province of Derne, or elsewhere within the dominions of the said bashaw, shall be withdrawn therefrom, and no supplies shall be given by or in behalf of the said United States, during the continuance of this peace, to any of the subjects of the said bashaw, who may be in hostility against him, in any part of his dominions; and the Americans will use all means in their power to persuade the brother of the said bashaw, who has cooperated with them at Derne, &c. to withdraw from the territory of the said bashaw of Tripoli; but they will not use any force or improper means to effect that object; and in case he should withdraw himself as aforesaid, the bashaw engages to deliver up to him his wife and children now in his power.

"ART. 4. Enemy goods on board vessels of either party, to pass free.

"ART. 5. Citizens or subjects in enemy vessels, etc.

"ART. 6. The vessels of both parties to be furnished with passports. Visit of American vessels by Tripoline cruisers, etc. American vessels of war meeting Tripoline cruisers, &c. Passports, &c.

try, and presented a petition to Congress for relief and remuneration, which, we believe, was not successful. This

"ART. 7. Purchase of prize vessels, &c.

"ART. 8. Provisions. Repairs. Landing cargo.

"ART. 9. Stranded vessels. No pillage, &c.

"ART. 10. Vessels attacked within gunshot of forts, &c.

"ART. 11. Commerce, &c. on the most favoured footing.

"ART. 12. Consul not answerable for debts, &c.

"ART. 13. Salutes.

"ART. 14. As the government of the United States of America has, in itself, no character of enmity against the laws, religion, or tranquillity of Mussulmen, and as the said states never have entered into any voluntary war or act of hostility against any Mahometan nation, except in the defence of their just rights to freely navigate the high seas, it is declared by the contracting parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two nations. And the consuls and agents of both nations, respectively, shall have liberty to exercise his religion in his own house. All slaves of the same religion shall not be impeded in going to the said consul's house at hours of prayer. The consuls shall have liberty and personal security given them, to travel within the territories of each other, both by land and sea, and shall not be prevented from going on board any vessel that they may think proper to visit. They shall have, likewise, the liberty to appoint their own drogoman and brokers.

"ART. 15. In case of any dispute arising, from the violation of any of the articles of this treaty, no appeal shall be made to arms; nor shall war be declared on any pretext whatever; but if the consul residing at the place where the dispute shall happen, shall not be able to settle the same, the government of that country shall state their grievances in writing, and transmit it to the government of the other; and the period of twelve calendar months shall be allowed for answers to be returned; during which time no act of hostility shall be permitted by either party; and in case the grievances are not redressed, and war should be the event, the consuls, and citizens or subjects of both parties, reciprocally, shall be permitted to embark unmolested on board of what vessel or vessels they shall think proper.

"ART. 16. If, in the fluctuation of human events, a war should break out between the two nations, the prisoners captured by either party shall not be made slaves, but shall be exchanged, rank for rank. And if there should be a deficiency on either side, it shall be made up by the payment of five hundred Spanish dollars for each captain,



unfortunate Prince seems to have been treated with injustice. We do not mean to say, that Eaton had authority to agree, that this country should restore Hamet to his throne. Neither he nor Mr. Barron had special instructions of any sort, though the latter had a general, discretionary direction of the business ; but Eaton had authority, at least twice confirmed by supplying him on two occasions with money or stores during the progress of the expedition, to procure Hamet's cooperation, and when that cooperation was solicited, it was understood, that the Pashaw and Eaton should assault Tripoli by land (see Barron's letter of March 22, 1805) and a naval force by sea.\* It looks very little like an equal cooperation for one party to make a peace, and to

three hundred dollars for each mate and supercargo, and one hundred Spanish dollars for each seaman so wanting. And it is agreed, that prisoners shall be exchanged in twelve months from the time of their capture ; and that the exchange may be effected by any private individual legally authorized by either of the parties.

"ART. 17. Enemies of the U. States not to sell prizes in Tripoline ports : but Americans may, &c.

"ART. 18. Disputes to be settled by the American consul.

"ART. 19. If a citizen of the United States should kill or wound a Tripoline ; or, on the contrary, if a Tripoline shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial ; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

"ART. 20. Persons dying intestate, &c. Validity of wills.

"Done at Tripoli, in Barbary, the fourth day of June, in the year one thousand eight hundred and five ; corresponding with the sixth day of the first month of Rabbia 1220.

"TOBIAS LEAR.

"In witness whereof, we, with the heads of our regency, subscribe it.

"Given at Tripoli, in Barbary, the sixth day of the first month of Rabbia 1220 ; corresponding with the fourth day of June 1805.

"[L. s.] JUSUF CARAMALLY, *Pashaw*, &c.

\* See Letter of Barron to Hamet, dated March 1805.

leave the other party half way on the expedition with no other resource than to get on board a man of war, and fly out of the country to save his life. Nay more, the United States engaged to use all their influence to induce Hamet to quit the territories of Derne.\* America had all the advan-

\* *"To the People of the United States of America.*

"It is known to the whole world, that the reigning Pashaw of Tripoli, Joussouf, obtained the throne by the murder of our father and elder brother and by my exile, who came next in succession. Driven by his impious and cruel usurpation I took refuge in Egypt, where I was kindly received by the Mameluke beys, who gave me a distinguished rank in the military service. Reposing in the security of peace, I had ceased to repine for the loss of my throne, and regretted only the lot of my unhappy subjects, doomed to the yoke of my cruel and tyrannical brother.

"It was at this epoch, that the arrival of General Eaton gave me hopes of better fortune; and though I could not tell what were his powers, I trusted to the faith of a great people, of whom he was the ostensible representative, and threw myself into his arms. We concluded a treaty at Alexandria, a copy of which is among the papers of Commodore Barron, in the custody of his secretary, Mr. Robert Denison. This treaty not only stipulates the recovery of the throne for me, but also includes several advantageous articles for the United States, for which General Eaton will be my voucher. Ought I then to suppose, that the engagements of an American agent would be disputed by his constituent government? I cannot suppose, that a gentleman has pledged towards me the honour of his country on purpose to deceive me.

"General Eaton and myself, with our joint followers, had already advanced six hundred miles into the kingdom of Tripoli, and a general defection had seized my brother's army, all things prepared the protected of America to be hailed sovereign of his usurped throne. At this juncture, a peace is concluded, in which a throne, acquired by rapine and murder, is guarantied to its usurper, and I, the rightful sovereign, the friend and ally of America, am left unprovided for. No article in my favour, no provision for me and my family, and no remuneration for the advantages I had forgone, in trusting to American honour. I am left in Syracuse, with thirty dependants, on the pittance of two hundred dollars per month, and no prospect of future establishment. What with expenses of my retinue, &c. &c. I, a sovereign prince, am now reduced to the pension of 150 cents per day.

"I

tages of this cooperation, and they were considerable, as we shall see from the letters of Bainbridge, Barron and Lear.

"I believe the Pashaw is very desirous of peace, and has great apprehensions of the intended attack, and was a negotiation to be attempted, I think it very probable, that it would succeed, for the apprehension of the attack might have as great an effect as the attack itself, and should the attack prove unsuccessful, he will no doubt continue in demanding a considerable sum."—"The Pashaw is now very attentive upon your transactions with his brother in Alexandria. A camp is going against Derne. Give me leave to tell you, that I found your plan with the Pashaw's brother very vast, and that you sacrifice your prisoners' lives here in case of success."

From Barron, May 18, 1805.

"Whatever may be the final result of this cooperation, I cannot reject the belief, that it has had a powerful effect upon the reigning Pashaw, and it may be fairly presumed, that the gallant conduct of our friends in the affair at Derne, and the capture of that place, will have their influence and dispose him to moderate his pretensions, and to think seriously of peace."

"I must, here, observe that Mr. Eaton, whose generosity I cannot sufficiently praise, has assisted me from his own finances; else hard, indeed, had been my lot.

"When the usages of ages have accustomed men to the government of one, the right of a throne enters into the system of human thoughts, and that usage must have its rights like others.

"In this situation, I appeal to the virtue, generosity and candour of the people and government of America. I trust that a brave and free nation will interest itself in behalf of a fallen prince, who has trusted to its national honour and good faith. I trust the government will take my case into consideration, and at least send me back to Egypt, indemnified for those comforts, lost by uniting my fortune to theirs: and I am confident the American people will feel for the misfortunes of one, who has fought in the united cause of their interest and his own right.

"HAMET PASHAW,

*"Son of Ali Pashaw Caramalli of Tripoli.*

*"Syracuse, Sept. 1, 1805."*

Again from Lear, June 6, 1805.

"I found that the heroic bravery of our few countrymen at Derne, and the idea that we had a large force and immense supplies at that place, had made a deep impression on the Pashaw."

Whether Hamet's conduct and influence were equal to the expectations of this country, there can be no doubt, that he was employed as an instrument; and we think as little, that, with the assistance of our squadron in the Mediterranean, at that time considerable, the 60,000 dollars could have been better employed than in purchasing a peace with Sidi Joussouf. We cannot believe that the lives of the American prisoners (consisting, unfortunately, of the whole crew of the frigate Philadelphia, lost on the rocks) were in the slightest danger.

The American flag was again hoisted in Tripoli, in June 1805. By article 3d of the treaty, Sidi Joussouf agreed to release Hamet's wife and children, as soon as the Pashaw should withdraw from his territories. As we have already said, Hamet went off with Eaton, but his family were detained in Tripoli. This appeared to be a violation of the compact. In Mr. Lear's letter of July 5, 1805, to the secretary of state, he observes: "At 4 p.m. Mr. N—— came off with the seal of the Pashaw to the preliminary articles, but with a condition, that time should be allowed for the delivery of the wife and family of his brother." This condition does not appear in any official instrument, nor was its meaning, at all understood, till the arrival of Mr. Davis, American consul at Tripoli in May 1807. This officer, having demanded the family of Hamet, according to the treaty, and at that time detained two years beyond the stipulation, was shown, by the minister of foreign affairs, Sidi Dghies, a secret article, signed the day of the treaty, by which Joussouf was allowed four years to restore his brother's family. As we have never seen any reason given, why this article was added to the treaty or not communicated, we shall insert the whole at length, together with an extract from Mr. Davis's letter, of June 2, 1807.

"I arrived at this place on the 7th ultimo, and on the 10th communicated to the minister of foreign affairs, my orders, relative to the execution of the 3d article of the treaty. He expressed some surprise at the demand, and instantly handed me the secret article, (of which I have the honour to enclose you a copy) and promised to take an early opportunity of acquainting the pashaw. He said it was so strange, that his master supposed, there must be some misunderstanding, that every body knew the opposition, which was made to that article on the part of the pashaw, even in the form it stood, and that my government must be convinced that time had not lessened the difficulties, annexed to its execution. That it appeared very inconsistent for me to present assurances of our friendship, while I came to violate the most sacred article of our treaty."—"At half past nine P. M. I was sent for to the castle, where we found the divan assembled, when my orders were again made known, and each in his turn offered his comments on the secret article, and, after considerable discussion, the pashaw addressed himself to me, and requested my opinion on the line of conduct he ought to pursue; that he had strong reasons for wishing to retain the family, and that he had justice on his side. I told his excellency, that I could foresee no possible ill, which could result to him from their immediate delivery, but that his retention of them would do us considerable injury, that our treaty was known to all the world, and our public faith pledged in their behalf, that his brother had cooperated with us, and to deceive him in such a tender point was to disgrace us as a nation.

"He asked if I would certify, that the treaty had been ratified, to which I consented, provided he would execute the third article. He replied that the acts of no individual should again involve him with us, and that the wishes of our government should be complied with. I thanked him, and informed him, that the wife of the bey and the other married sister were permitted to remain, at which the divan expressed much satisfaction.

"On the 13th I waited on the minister to learn, when they would be ready to embark, and requested that their slaves, effects, &c. would not be withheld, to which he consented. I told him that I now had a favour to solicit, which was, that some establishment should be made for the children. He assured me that he had made a considerable pecuniary sacrifice to release them, that the

bey was much disposed to do something for the mother and brothers of his wife, and in order that no discontent might remain on our part, he would engage that they should be provided for, and that he would give something handsome towards it himself. I told him that he should not lose by his liberality, and that the expenses, he had incurred, would be remunerated him by the United States. The exact amount of his sacrifices will be ascertained, and I shall trust to his excellency the President to make good my assurances."

The secret article, never communicated to the American government, is in these words:

—"Whereas his excellency the pashaw of Tripoli has well grounded reasons to believe, if the wife and children of his brother should be delivered up, immediately on his leaving his (the pashaw's) dominions, as expressed in the 3d article of the treaty of peace and amity concluded between the United States of America and the pashaw of Tripoli on the 4th day of the present month, that he; the said brother, would engage in new operations of hostility against him to the disturbance of the internal tranquillity of his dominions; and the said United States being willing to evince their good disposition to preserve the said treaty with sincerity, and that tranquillity should be secured in the dominions of the said pashaw, do hereby agree to a modification of the said article of the treaty, aforesaid, so that the term of four years, from the conclusion of said treaty, shall be fixed for the execution of the engagement of the pashaw to deliver to his brother his wife and children, during which time the said brother is to give evident proofs of his peaceful disposition towards the pashaw, and of his determination not to disturb the internal tranquillity of his dominions. Given under my hand and seal, at Tripoli, in Barbary, this fifth day of June, in the year one thousand eight hundred and five.

"TOBIAS LEAR,

"Commissioner of the United States of America for  
[L. s.] concluding a peace with the pashaw of Tripoli."

This transaction brings us to a close of our relations with Tripoli.\*

\* Sidi Joussouf, so often mentioned, was in 1805, according to the Spanish traveller Ali Bey, about 40 years old, with a handsome face,

## TUNIS.

There has been little variety in our relations with the Barbary States ;—the agents of this government have been received with but one salutation,—give,—give. The prodigal treaty, made with Algiers in 1795, and a stipulation to pay an annual tribute, have proved a great hindrance in our negotiations with the other Regencies ; the Turkish pashaws never failing to take advantage of every argument or circumstance, and, in the matter of making a bargain, are, perhaps, not excelled by any persons in the world. They are, properly speaking, traders, and not always on a large scale, employing either exaction, or haggling to scrape together all the money within their reach, that article being the representative of every thing in the East. In this work they are very successful. The people of those ancient countries have long been remarkable for great sagacity, penetration, and an uncommon knowledge of human nature. This is well shown in the remarks, scattered throughout many of the beautiful tales, that have been translated from the Eastern languages.

In one respect Tunis will ever be viewed with a peculiar feeling—the first place, as we turn to the East on the northern shore of Africa, where we find the Turks still encamped\* among the remarkable ruins of ancient times ; occupying

endowed with considerable talent and tolerably acquainted with Italian—fond of pomp and majesty, behaving with dignity, and yet in an agreeable and polished manner.

\* We have used in the text a celebrated expression, applied, we believe by Gibbon, to the Turks, and we may perhaps attribute to this phrase some of the feeling, that prevails in regard to them among the Christian nations. The Turks are usually considered as intruders in Europe, but they established themselves there pretty much in the same way, as the ancestors of most of the people, who hold this language ;—by the sword. They are called barbarians. They are not so much so as a considerable portion of the Russian, and, perhaps, a small portion of the Austrian population. They have in Europe two beautiful cities (Constantinople and Adrianople, particularly the latter.) They understand many curious and beautiful manufactures, particu-

the neighbourhood of the site of one of the most celebrated cities, known in history. From amidst the traces of the desolations of the northern races of men, polished nations have arisen, but not only the singular fortune has attended the Turk of having been in possession, for several centuries, of the most precious remains,—of the most beautiful specimens of ancient art on the three continents, but the fatal and peculiar consequence has followed this dominion, of blighting and effectually staying, during the last hundred years, the growth and progress both of population and civilization. In exchange, though the remuneration to mankind can hardly be called a sufficient one, we have the delight and advantage of beholding those ruins in their original freshness and purity; for they owe their dilapidations to time or to an occasional war;—the Turk, himself, adding but to the picturesque effect of the scene. No civilized people have intervened to disturb the chain of thought and association, and, even, if not to leave their own ruins on the ground,—at least, to have built palaces and cathedrals by the side of temples and triumphal arches.

The ruins of Greece and of Asia, therefore, awaken very different emotions from those of Italy, and, on that account, possess an interest, which the modern states in the latter country have entirely effaced. In Rome in almost the same street may be seen the Pantheon and St. Peter's;—two

larly in silk, and they have long enjoyed an extensive commerce with England, France, Austria and some of the Italian states. For four centuries they have held a *diplomatic* station in Europe, and have constantly exchanged ambassadors with the most powerful nations. In a political point of view, therefore, they merit the same attention and treatment as any other people. As to the fidelity, with which they have observed treaties, the Russians, at least, can reproach them with nothing on that head. The Crimea, we imagine, can furnish quite as profligate and bloody scenes as Poland. But the great objection to the Turks is that they make no progress in civilization. This objection is not strictly founded in fact. At periods of their history they have made a decided progress;—they are now, undoubtedly, in a state of comparative decay, but not more so than the Spaniards or, perhaps, even the Italians.



ages,—two races of civilized men, present to the imagination at the same moment ; but at Athens, there has been no modern architect to build a cathedral more spacious and splendid than the Parthenon. On the contrary, the mind goes directly back to the time of Pericles. The traveller owes this luxury and enjoyment to a race of men, at times, the terror or scourge, always the detestation of Europe, and whose government, we admit, is fatal to the progress of society, to the improvement of man, and, for that very reason, necessarily contains within its own bosom a canker, that gradually consumes it. But classical associations, a strong and natural sympathy, arising from the same faith, reasons of a religious nature, connected with the destruction of the Ottoman empire, flowing directly from the prophecies of the Revelation, and ancient prejudices, derived from the traditions of the crusades, most fully account for the sort of unsparing aversion and disgust, in which the Turks are regarded. Nevertheless, they are a calumniated race. A feudal people, they possess many of the virtues, for which those times were eminent in Europe, now held in such high estimation as to be termed chivalric. They are, too, a manly people,—they are endowed with a singular fidelity of character, and a pure sense of honour ;—none can exceed them in the care and exactness, with which they perform their religious rites, the faith, truly, of a false prophet ;—and, if we may speak of the lesser virtues, all travellers have borne willing testimony to the dignity and courtesy of their manners. In the decoration of their houses, in their taste for the precious stones, and in the science of cookery, among the wealthiest classes, they have fully attained the perfection of a refined and polished society. We speak now of the legitimate Turkish character, such as it is found in the old, settled provinces of the empire, where the government is tolerably steady and regular.

The reader will, perhaps, be surprised to learn, that before adjusting the only treaty ever made with Tunis, a discussion arose with the Bey on a commercial point,—reciprocity of commerce. The Carthaginians may well have pre-

sumed to enter upon that controversy. Joel Barlow, Consul General at Algiers, employed, in 1797, a French trader by the name of Famin, at Tunis, to conclude a treaty with the Bey for the protection of our ships, but it contained an article (in substance throwing the trade into foreign hands), the senate very properly refused to ratify. In 1798, William Eaton was appointed consul to Tunis, and James L. Cathcart at the same time to Tripoli. These individuals were authorized to procure an alteration in the offensive article. They arrived in Tunis in March '98, but Mr. Cathcart soon after leaving it, the business fell into Mr. Eaton's hands. The Bey would not agree to an alteration, because the footing of the most favoured nation, the one proposed as a substitute by the consul, was a thing, he said, he could never ascertain on account of the distance and other difficulties. He was willing to alter the rate of duties to any sum, but he chose to have something fixed and certain. There was, also, a dispute about salutes, it being the custom of these corsairs to demand a barrel of gunpowder for every gun fired as return. This was not only an expense to the United States, but considered as a species of tribute. On this subject the Bey remarked—

“ ‘ However trifling it may appear to you, to me it is important. Fifteen barrels of powder will furnish a cruiser which may capture a prize and net me one hundred thousand dollars.’ ”

“ We told him the concession was so degrading that our nation would not yield to it: both justice and honour forbade; and we did not doubt but the world would view the demand as they would the concession.

“ ‘ You consult your honour,’ said he, ‘ I my interest; but if you wish to save your honour in this instance, give me fifty barrels of powder annually, and I will agree to the alteration.’ We replied, that we should not expend a thought upon a proposition which aimed at making us tributary. We would agree to pay him for the powder he burned in the salute. He turned to the Sapidapu, and said, in Turkish: ‘ These people are Cheribeenas; they are so hard there is no dealing with them.’ (Cheribeenas are merchants from the confines of Persia.) ”

He was offered 10,000 dollars instead of the regalia.—He said “no, they were the usance, and he should neither abate or commute.” In the course of the year, the difficulties appear to have been removed, and the treaty was finally signed, the only transaction of the kind the United States are likely to have with Tunis.\* This Regency is the only one,

\* [TRANSLATION.]

“Under the auspices of the greatest, the most powerful of all the princes of the Ottoman nation who reign upon the earth, our most glorious and most august emperor, who commands the two lands and the two seas, Selim Kan, the victorious, son of the sultan Moustafa, whose realm may God prosper until the end of ages, the support of kings, the seal of justice, the emperor of emperors.

“The most illustrious and most magnificent prince, Hamouda Pacha, bey, who commands the Odgiak of Tunis, the abode of happiness, and the most honoured Ibrahim Dey, and Soliman, aga of the janissaries, and chief of the divan, and all the elders of the Odgiak; and the most distinguished and honoured President of the Congress of the United States of America, the most distinguished among those who profess the religion of the Messiah, of whom may the end be happy.

“We have concluded between us the present treaty of peace and friendship, all the articles of which have been framed by the intervention of Joseph Stephen Famin, French merchant residing at Tunis, chargé d'affaires of the United States of America; which stipulations and conditions are comprised in twenty-three articles, written and expressed in such a manner as to leave no doubt of their contents, and in such a way as not to be contravened.

“ART. 1. There shall be a perpetual and constant peace between the United States of America and the magnificent pacha, bey of Tunis; and also a permanent friendship, which shall more and more increase.

“ART. 2. Persons and property of either party, on board enemy vessels, &c.

“ART. 3. Enemy goods on board vessels of either party, free.

“ART. 4. Passports, &c.

“ART. 5. Merchant vessels under convoy, to pass on the word of the commander.

“ART. 6. If a Tunisian corsair shall meet with an American merchant vessel, and shall visit it with her boat, she shall not exact any thing, under pain of being severely punished. And, in like manner, if

that has sent an ambassador to this country. He came for the professed purpose of obtaining the restoration of three

a vessel of war of the United States shall meet with a Tunisian merchant vessel, she shall observe the same rule. In case a slave shall take refuge on board of an American vessel of war, the consul shall be required to cause him to be restored; and if any of their prisoners shall escape on board of the Tunisian vessels, they shall be restored; but if any slave shall take refuge in any American merchant vessel, and it shall be proved that the vessel has departed with the said slave, then he shall be returned, or his ransom shall be paid.

"ART. 7. Passports for prize vessels purchased. Consular bill of sale.

"ART. 8. Provisions for vessels in port. Repairs. Unloading cargoes, &c. Wages of labourers.

"ART. 9. Vessels wrecked to be assisted, &c. Salvage.

"ART. 10. Vessels attacked near forts to be defended. Enemies not to pursue from port.

"ART. 11. When a vessel of war of the United States of America shall enter the port of Tunis, and the consul shall request that the castle may salute her, the number of guns shall be fired which he may request; and if the said consul does not want a salute, there shall be no question about it.

"But in case he shall desire the salute, and the number of guns shall be fired which he may have requested, they shall be counted, and returned by the vessel in as many barrels of cannon powder.

"The same shall be done with respect to the Tunisian corsairs, when they shall enter any port of the United States.

"ART. 12. When citizens of the United States shall come within the dependencies of Tunis, to carry on commerce there, the same respect shall be paid to them which the merchants of other nations enjoy; and if they wish to establish themselves within our ports, no opposition shall be made thereto, and they shall be free to avail themselves of such interpreters as they may judge necessary, without any obstruction, in conformity with the usages of other nations, and if a Tunisian subject shall go to establish himself within the dependencies of the United States, he shall be treated in like manner.

"ART. 13. If, among the crews of merchant vessels of the United States, there shall be found subjects of our enemies, they shall not be made slaves, on condition that they do not exceed a third of the crew; and when they do exceed a third, they shall be made slaves: the present article only concerns the sailors, and not the passengers, who shall not be in any manner molested.

Tunisian vessels, taken off Tripoli in 1806, by the American blockading squadron. He succeeded in his mission.

We here terminate the account of our relations with the Bar-

"ART. 14. A Tunisian merchant, who may go to America with a vessel of any nation soever, loaded with merchandise which is the production of the kingdom of Tunis, shall pay duty (small as it is) like the merchants of other nations; and the American merchants shall equally pay for the merchandise of their country, which they may bring to Tunis under their flag, the same duty as the Tunisians pay in America.

"But if an American merchant, or a merchant of any other nation, shall bring American merchandise under any other flag he shall pay six per cent. duty: in like manner if a foreign merchant shall bring the merchandise of his country under the American flag, he shall also pay six per cent.

"ART. 16. The merchant vessels of the United States, which shall cast anchor in the road of Gouletta, or any other port of the kingdom of Tunis, shall be obliged to pay the same anchorage, for entry and departure, which French vessels pay, to wit: seventeen piasters and a half, money of Tunis for entry, if they import merchandise; and the same for departure, if they take away a cargo; but they shall not be obliged to pay anchorage if they arrive in ballast, and depart in the same manner.

"ART. 17. Each of the contracting parties shall be at liberty to establish a consul in the dependencies of the other; and if such consul does not act in conformity with the usages of the country, like others, the government of the place shall inform his government of it, to the end that he may be changed and replaced; but he shall enjoy, as well for himself as his family and suite, the protection of the government; and he may import for his own use all his provisions and furniture, without paying any duty; and if he shall import merchandise, (which it shall be lawful for him to do) he shall pay duty for it.

"ART. 18. Consuls, &c. not answerable for debts of others, &c. unless bound in writing.

"ART. 19. Effects of persons dying intestate, &c.

"ART. 20. The consul judge of disputes between citizens, &c.

"ART. 21. If a citizen or subject of one of the parties shall kill, wound, or strike, a citizen or subject of the other, justice shall be done according to the laws of the country where the offence shall be committed: the consul shall be present at the trial; but if any offender shall escape, the consul shall be in no manner responsible for it.

"ART. 22. Civil disputes to be tried in presence of the consul, &c.

barry powers. They were truly dismal and discouraging in the beginning. We had all the appearance of playing the part, on that coast, of one of the lesser European powers. But at a

"ART. 23. War not to take place until a demand and refusal of justice. In case of war, one year allowed to citizens, &c.

"The agreements and terms above concluded by the two contracting parties, shall be punctually observed, with the will of the Most High: and for the maintenance and exact observance of the said agreements, we have caused their contents to be here transcribed, in the present month of Rebia Elul, of the Hegira, one thousand two hundred and twelve, corresponding with the month of August, of the christian year one thousand seven hundred and ninety-seven.

"The Aga Soliman's signature and [L. s.]

"Ibrahim Dey's signature and [L. s.]

"The Bey's signature and [L. s.]

"In testimony whereof, we annex our names and the consular seal of the United States. Done in Tunis, the twenty-sixth day of March, in the year of the christian era one thousand seven hundred and ninety-nine, and of American independence the twenty-third.

"WILLIAM EATON.

"JAMES LEANDER CATHCART."

"Whereas certain alterations in the treaty of peace and friendship, of August 1797, between the United States and the Bashaw and Bey of Tunis, were agreed upon and concluded, between his highness Sidi Mahmoud, the Bey, and S. D. Heap, Chargé d'Affaires of the United States at Tunis, on the twenty-fourth day of February one thousand eight hundred and twenty-four, by the articles in the words following, to which are annexed the altered articles, as they were in the treaty before the alterations :

"ART. 6—as it now is. If a Tunisian corsair shall meet with an American vessel, and shall visit it with her boat, two men only shall be allowed to go on board, peaceably, to satisfy themselves of its being American, who, as well as any passengers of other nations they may have on board, shall go free, both them and their goods; and the said two men shall not exact any thing, on pain of being severely punished. In case a slave escapes, and takes refuge on board an American vessel of war, he shall be free, and no demand shall be made either for his restoration or for payment.

"ART. 11—as it now is. When a vessel of war of the United States shall enter the port of the Gouletta, she shall be saluted with twenty-one guns, which salute the vessel of war shall return, gun for gun

time when it was hardly known in this country, that we possessed a navy, our commerce was conducted in the Mediterranean without molestation, or even the apprehension of it.

only, and no powder will be given, as mentioned in the ancient eleventh article of this treaty, which is hereby annulled.

"ART. 12—*as it now is.* When citizens of the United States shall come within the dependencies of Tunis to carry on commerce there, the same respect shall be paid to them which the merchants of other nations enjoy; and if they wish to establish themselves within our ports, no opposition shall be made thereto; and they shall be free to avail themselves of such interpreters as they may judge necessary, without any obstruction, in conformity with the usages of other nations; and if a Tunisian subject shall go to establish himself within the dependencies of the United States he shall be treated in like manner. If any Tunisian subject shall freight an American vessel, and load her with merchandise, and shall afterwards want to unload, or ship them on board of another vessel, we shall not permit him, until the matter is determined by a reference of merchants, who shall decide upon the case, and after the decision, the determination shall be conformed to.

"No captain shall be detained in port against his consent, except when our ports are shut for the vessels of all other nations, which may take place with respect to merchant vessels, but not to those of war.

"The subjects and citizens of the two nations, respectively, Tunisians and Americans, shall be protected in the places where they may be, by the officers of the government there existing; but, on failure of such protection, and for redress of every injury, the party may resort to the chief authority in each country, by whom adequate protection and complete justice shall be rendered. In case the government of Tunis shall have need of an American vessel for its service, such vessel being within the regency, and not previously engaged, the government shall have the preference, on its paying the same freight as other merchants usually pay for the same service, or at the like rate, if the service be without a customary precedent.

"ART. 14—*as it now is.* All vessels belonging to the citizens and inhabitants of the United States shall be permitted to enter the ports of the kingdom of Tunis, and freely trade with the subjects and inhabitants thereof, on paying the usual duties which are paid by other most favoured nations at peace with the regency. In like manner, all vessels belonging to the subjects and inhabitants of the kingdom of Tunis

The system, adopted with regard to the Corsair States, has done the greatest honour to the government, as well as to those brave and skilful men, who were entrusted with the execution of it.

shall be permitted to enter the different ports of the United States, and freely trade with the citizens and inhabitants thereof, on paying the usual duties which are paid by other most favoured nations at peace with the United States.

"Concluded, signed and sealed at the palace of Bardo, near Tunis, the 24th day of the moon jumed-teni, in the year of the Hegira 1239, corresponding with the 24th of February 1824, of the christian year and the 48th year of the independence of the United States, reserving the same, nevertheless, for the final ratification of the President of the United States, by and with the advice and consent of the Senate.

"S. D. HEAP, Chargé d'Affaires. [L. s.]

"SIDI MAHMOUD'S signature and [L. s.]"



## CHAPTER XIV.

## RELATIONS WITH SOUTH AMERICAN STATES.

*All Spanish America on Continent emancipated—Spain, Assyrian monarchy of modern times—Dismemberment awakens melancholy reflections—Writers too sanguine in regard to free governments—North American Revolution excited extravagant hopes—Difference between liberty and independence—England early had a project to emancipate South America—Miranda—Jesuits—Cooperation of United States sought—Letters of Miranda to Hamilton—Plan for emancipation—France, a similar scheme—1808, beginning of revolution—Oppressions of the colonies—Lord Wellington ordered to Spain instead of South America—Napoleon's designs on that continent—Instructions to his agent—Ignorance and apathy of the natives—Buenos Ayres made most rapid progress—Agents sent secretly by United States—Alarmed by movements of France and England—Transactions of this government with that continent—Agents from South America in this country—Not received—Tupac Amaru—Account of revolution in different provinces—Great vicissitudes as well as cruelties—Manifests of independence—Negotiations of colonies with mother country—Different motives in commencing revolution—Report of House of Representatives on negotiation—Ministers appointed—Obstacles to progress of revolution—Old Spaniards held all offices—All the capital—Nobility—Different races of men—Present state of republics—General boundaries—Spain protests feebly against recognition—Appeals to Holy Alliance—Declaration of England—Treaties with Colombia and Guatemala—Congress of Panama—Account and discussion of that important business—Never held—General remarks on intercourse with South America—Present state of diplomatic relations—Brazil—Diplomatic relations.*

Or the kingdom of the Indies in this quarter of the globe there still exists entire but a small remnant, composed of the islands of Cuba, Porto Rico and a portion of St. Domingo.

On the main land, the vast possessions of Spain are now wholly emancipated ;—the Vice Royalties of Mexico, La Plata, Peru, and New Granada and the Captain Generalships of Chili, Caraccas and Guatimala have been merged or mouldered into the Republics of Peru, Chili, Mexico, Colombia, the United Provinces, and the federation of the centre of America.

This fatal dismemberment of the Assyrian monarchy of modern times cannot be viewed but, in some sort, with melancholy feelings. Whether the imagination is fascinated and bewildered by the splendid phraseology of the court of Castille and Arragon,—by the former extent of her possessions, spreading over the largest as well as the best portion of the globe, kingdoms constituting her colonies ;—by the romantic enterprizes and achievements of Cortes in Mexico, of Pizarro in Peru, the first European adventurers, that penetrated, with success, into the Cordilleras of the new world,—by the relation of the countless treasures, found in those countries ;—by the expeditions, undertaken in search of the “golden region,” a mysterious territory, placed in the midst of the Andes, and holding the same rank in the fabulous history of modern times as that of the golden fleece of antiquity ;—or by a sort of uncertain, undefined impression, that has always existed concerning the wealth of the mines of South America ;—at any rate, these considerations have imparted a charm and interest to this continent, all must have deeply felt.

Many writers, looking at the single relation of colony and metropole, have expressed surprise, that the independence of the South American states should have been so long delayed, and have been betrayed into hasty and unreasonable complaints, that colonies, all over the world, did not immediately aspire to the distinction and privilege, long ago asserted and obtained by the northern portion of this hemisphere. There are, undoubtedly, certain accidents, or events that exercise a general, indirect influence, either in hastening, or retarding the developement of a great political change ; but, after all, the revolution is substantially effected by the

character and condition of the people, concerned in the enterprise. In the modern (much less in the Spanish) sense of the term, the United States were never colonial, and the moment they discovered a disposition in the mother country to reduce them to this condition, to restrict their commerce in a harsh, jealous manner, they began, at once, a war of petitions, resolutions and town meetings, which ended, as all such things must do with a people of their character and of that of the mother country, in a conflict of a very different description;—it was, in substance a war for commercial freedom, but in that circumstance may be discerned the germ and principle of all their rights. The anglo-Americans would not have endured for one brief month the insults, vexations and oppressions, to which the Spanish Americans have submitted for three hundred years. Their revolution, therefore, can serve as a model for other similar undertakings, only for the single consideration, that it led to a dismemberment. At least, it is quite evident, that the example of this portion of the continent exercised, during the last century, no sort of influence on the southern, where, the greatest part of the time, a discouraging apathy and hopeless lethargy prevailed. Even if there were discontents,\* disaffection,

\* There is a curious proof of the notice Miranda and his cause attracted in England, even at an early period, in the political Herald and Review for the year 1785.

"The flame kindled in North America," says the writer in that work, "as was foreseen, has made its way into the American dominions of Spain. That jealousy, which confined the appointments of government in Spanish America to native Spaniards, and established other distinctions between these and their descendants on the other side the Atlantic, has been a two edged sword and cut two ways. If it has hitherto preserved the sovereignty of Spain in those parts, it has sown the seeds of a deep resentment among the people. Conferences are held, combinations are formed in secret among a race of men whom we shall distinguish by the appellation of Spanish Provincials. The example of North America is the great subject of discourse and the grand object of imitation. In London, we are well assured, there is, at this moment, a Spanish American of great consequence and possessed of the confidence of his fellow-citizens, who aspires to the glory of being the deliverer of his country."

and occasionally obscure plots, briefly and easily stifled with the blood of a few unfortunate victims, the people, at large, neither sought for liberty, nor possessed any accurate notions respecting their situation.

But the position of the Spanish colonies on the main early attracted the attention of some European statesmen, actuated, probably, by any other motive than a desire to fashion them into republics. The object was either political or commercial, though, we think it likely, the revolution of the United States and the part, one of the leading powers of Europe acted on that occasion, may have suggested the magnificent project of accomplishing the independence of Spanish America. The British ministry seriously entered upon this business in the year 1790, at the time of the difficulties with Spain, respecting Nootka Sound. No government was better acquainted with the difficulty of subduing rebellious colonists, or would be less grieved, that a similar calamity, from which they themselves still suffered both loss and mortification, should befall Spain. It is possible that General Miranda, who has figured in so many revolutions, may have been the author of the scheme, though the British government, from the experience they possessed, needed very little prompting in regard to that matter. Several of the Jesuits, expelled from the Spanish settlements and who had sought refuge in Italy, were invited to London by Mr. Pitt, both to give information, and take a part in the operation. Though an accommodation was shortly after effected with Spain, assurances were given to Miranda and the Jesuits, of whom the Spaniard, Don Pablo Gusman was one, that the liberation of South America would still be kept in view by the ministry.

In 1792 the republican rulers in France, who spared no continent in their projects for fraternity and emancipation, entered, with zeal and vivacity, into an engagement to accomplish the same object we have just mentioned, though urged to undertake the enterprize by different motives. The proposition was originally communicated by Brissot to Dumourier (commanding the French armies in the Neth-

erlands, with whom Miranda was serving) in the following terms;—"Spain is ripe for liberty, her government is resuming its preparations. We must, therefore, undertake our own to naturalize liberty there. This revolution should be commenced both in European and American Spain. The fate of this last revolution depends on a single man; you revere and esteem him; it is Miranda. He will soon bring to reason the turbulent whites in the colonies, and will become the idol of the men of colour. How easy to excite a rebellion in Spain and Spanish America. How easy, with twelve thousand troops of the line, now at St. Domingo, and with ten or fifteen thousand brave mulattoes, to invade the Spanish colonies. The name of Miranda is worth an army." This enterprize was also abandoned on account of the discouraging views presented by Miranda, himself, and the pressure of other affairs. In 1797 the aid of Great Britain was, a second time, invoked for the accomplishment of this great work and, as it would appear, in quite a grave and imposing manner; proposals being formally made by a number of emissaries from Mexico and other Spanish provinces, assembled at Paris, the substance of which is contained in the following abstract:

"The first article states, that the Hispano-American colonies, having, for the most part, resolved to proclaim their independence, were induced to address themselves to the government of Great Britain, in the confidence, she would not refuse them that assistance, which Spain, herself, in the midst of peace had not declined extending to the British colonies in America;—

"The second article stipulates the sum of thirty millions sterling, which South America would pay to Great Britain for the assistance required;—

"The third article states, the amount of the British force which was deemed requisite;—

"The fourth article it is proper to present in the words of the document itself. 'A defensive alliance formed between Great Britain, the United States and South America is so recommended by the nature of things, by the geographical situation of the three countries, by the productions, wants, character, habits and manners

of the three nations, that it is impossible, it should not long continue, especially if care is used to consolidate it by an analogy in the political form of the three governments; that is to say, by the enjoyment of civil liberty, wisely conceived; we may even say with confidence, it is the only hope that remains for liberty, audaciously insulted by the detestable maxims, avowed by the French republic, and the only mode of restraining the destroying and desolating ambition of the French system.'

"The fifth relates to a treaty of commerce between Great Britain and South America.

"The sixth stipulates the opening of the navigation between the Atlantic and Pacific Oceans by the isthmus of Panama, as well as by the lake of Nicaragua and the guaranty of its freedom to the British nation.

"The seventh concerns the arrangement of the commerce between the different parts of South America itself, proposed to be left on its present footing, till a meeting of deputies from the different provinces of the continent can arrange the terms of their union.

"The eighth points to some project to be devised of a connexion between the bank of England and those of Lima and Mexico for the purposes of mutual support, and of giving England the advantage of that command of the precious metals, which the country, supplying them, might have it in its power to yield.

"The ninth and tenth articles relate to the project of alliance between South America and the United States. The principal points are the ceding to the United States of the Floridas, the Mississippi being proposed as the most advisable boundary between the two nations, and the stipulation of a small military force from the anglo-Americans to aid in the establishment of the independence.

"The eleventh, respecting the islands, states the plan of resigning all those, which belonged to the Spaniards, excepting only Cuba, the possession of which is rendered necessary by the situation of the Havana, commanding the passage from the Gulph of Mexico."

General Miranda, having, at the request of the individuals, embarked in this business, repaired to London, had several conferences with Mr. Pitt in relation to the terms, we have extracted, and there is reason to suppose, the ministry were

disposed to enter, without delay, into the scheme. At least, the following parts of letters from Miranda (if dependence can be placed on them) furnish some evidence of this fact, and also of a proposed cooperation on the part of the United States. They were written in April and October 1798, and are addressed to Alexander Hamilton.

"This will be delivered to you, my dear and respectable friend, by my countryman Don —, the bearer of despatches of the greatest importance for the President of the United States. It appears that the moment of our emancipation is arriving, and that the establishment of liberty on the whole American continent is confided to our care by Providence. The only danger, I foresee, is the introduction of French principles, that poison liberty in its cradle, and will in the end destroy your own."—Again—"Your wishes are in some degree fulfilled, since it is here agreed, that the English troops shall not be employed in the land operations; the naval force will be English, while the troops, employed on shore, will be American. Every arrangement is made, and we only wait for the decision of your President to depart instantly."

The following letter from General Hamilton purports to be an answer to the first of Miranda, just recited; we cannot answer for its genuineness.

HAMILTON TO MIRANDA.

"New-York, August 22, 1798.

"Sir—I have lately received by duplicates, your letter of the 6 of April, with a postscript of the 9th of June. The gentleman, you mention in it, has not made his appearance to me, nor do I know of his arrival in this country; so that I can only divine the object from the hints in your letter.

"The sentiments I entertain in regard to that object, have been long since in your knowledge, but I could personally have no participation in it, unless patronized by the government of this country. It was my wish, that matters had been referred for a cooperation in the course of this fall, on the part of this country; but that can now scarce be the case. The winter, however, may mature the project, and an effectual cooperation by the United States may take place. In this case, I shall be happy in my official station to be an instrument of so good a work.

"The plan, in my opinion, ought to be a fleet of Great Britain, an army of the United States ;—a government for the liberated territories, agreeable to both the cooperators, but about which there probably will be no difficulty. To arrange the plan, a competent authority to some person here from Great Britain, is the best expedient. Your presence here will in this case be extremely essential.

"We are raising an army of 12,000 men. General Washington has resumed his station at the head of the armies. I am appointed second in command.

"With esteem and regard, &c.

"A. HAMILTON."

There is, also, another letter, about the same time and of similar import, to General Knox. It was proposed, that the United States should furnish 10,000 land troops, but as President Adams did not transmit an immediate answer, the measure was postponed. When war was again declared, after the peace of Amiens, the British government set about organizing an armament directed against South America, to the command of which Sir Home Popham was appointed ;—The expedition of Whitelocke to Buenos Ayres and of Crawford to Chili formed part of the general project. The results of these operations were all unfortunate, in which remark we may fully include Miranda's own hasty enterprize from this country in 1806 to Caraccas. But England was, far indeed, from being discouraged and thrown off the course by these severe and numerous failures and defeats. In the summer of 1808 a large force was assembled at Cork under the command of Sir Arthur Wellesley for the purpose of being transferred to America, but the sudden and general revolution in Spain gave another direction to its destination. From this rapid sketch it will be apparent, that, for eighteen years, England had been meditating a plan to effect the separation of the colonies from the mother country.

We have now arrived at the year 1808, which may be considered the true æra of Spanish American emancipation. Since Philip, the grandson of Louis XIV. ascended the throne of Spain in 1700, that country has been little else



than a province of France. The baneful consequences of the union of the two crowns were well foreseen at the time, and from it sprung one of the most general and disastrous wars, by which Europe has been desolated. For the last century, Great Britain has been at war with France nearly half that number of years. And Spain, all the time affording the full aid of her influence, resources and supplies, has been seen entering into the fight towards the middle of it, fresh and cool, and quietly selecting the spot, where the blow could be best planted. But on the other side, England bearing this form of attack with patience, and never ignorant of the quarter, whence it proceeded, has long been on the watch for a fair opportunity to turn on a disguised and insidious foe. Before the independence of the North American provinces, no one thought of liberating half a hemisphere at a single dash of the pen. Great Britain would not, at that period, have undertaken it on account of the pernicious effects of the example, and every body was surprised that Spain, with a whole continent of colonies on her feeble hands, should have engaged in a war, that has been literally sowing a whirlwind for herself. In the emancipation of South America, the obvious and uncommon advantages presented themselves to the watchful, grasping and aspiring policy of England, of distressing and embarrassing Spain, despoiling her of almost the last remnant of her commerce, and forcing an entrance for English trade and manufactures, into new and extensive markets, from which the wasting, relentless system of the laws of the Indies scrupulously excluded them. Spain, confined to the Peninsula, would have been but a feeble ally of France; and South America, opened to England, speedily would have become one of her best customers, and amply repaid the expenses of her prodigal wars in Europe.

The whole coast of Spanish America was sealed and manacled with the hand and grasp of an inquisitor;—it was really as inaccessible as the fabulous valley of the Dorado;—and as in that case, it was natural enough for Europeans to imagine that, if it could once be approached, wealth would

be found as abundant. This impression will in time, no doubt, be fully realized, but for far different reasons, than as being the seat of rich mines. It is now nearly forty years, since this land of promise disclosed itself to the vision of the great English minister, and so curiously and happily are the relations of government and commerce interwoven and blended, that every endeavour, made to secure an opening for British trade or manufactures, has been one step taken towards the introduction of opinions and subjects of enquiry imbued with a slight degree of liberality, and partaking of that sort of character and influence, which, eventually, will lead to the establishment of a well regulated government. Commerce has truly become an apostle, a missionary, that scatters, throughout the globe, the seeds of liberty ;—the surest, safest advocate that can be employed,—it appeals to the interest of men,—it inculcates the desire to obtain, to accumulate ; to learn and maintain those rights, that advance and protect the industry of men, and thus are laid the most solid and durable foundations of free, refined and accomplished States.

Till 1808 or '10 indifference and apathy prevailed among the mass of the people in relation to their civil rights and political institutions. We do not seek for the evidence of this observation in the repeated failures of foreign expeditions, undertaken to South America ; they may be accounted for from causes entirely disconnected with the condition of the country ; but golden opportunities, presented of late years with almost every season for emancipation, were, yet, neglected with a perseverance, that not only awakened indignation, but raised just and alarming doubts of the capacity of these communities for freedom. So extreme, so discouraging was the ignorance, or, perhaps, the sluggishness of the colonies, that they did not seem to be conscious of the faltering, tottering gait of the mother country. The traditions of ancient power and greatness, the tales of the exploits of the "conquistadori," appeared to stand in the place of solid authority, of a firm, stable government. No one will say, that all the plans, proposed for liberation, were either judi-

cious or skilfully adjusted. In general, they were conceived and arranged by a few South Americans, either of disaffected dispositions, or imbued with sentiments far too liberal and enlightened for the atmosphere of their country. The cause of legitimate, free government has, perhaps, been little benefitted in any age or state by the labours and endeavours of such persons. For the most part, they appear on the scene of life, confounded and entranced by gay and bright visions of liberty,—by an absence of practical knowledge, too often the unfortunate condition of men of a philosophical, inquisitive temperament, born and bred under arbitrary governments,—or unhappily with feelings and dispositions, corrupted and distorted by the gall and wormwood, forced into the system by personal mortification and disappointment. The first open steps toward emancipation, in most cases attended with fatal consequences, have been taken by individuals of this description. But where something more than mere independence is needed, where it is necessary to regenerate the people, as well as reform the government, what Lord Chatham said of confidence, is equally true of liberty; “it is a plant of slow growth.” What if La Sainte guillotine is led, to the tune of “la carmagnole,” through every town! What if a priest hangs at every lamp cord! This is not freedom. And the only thing we can say with tolerable composure in the dejection of the moment is, that in this extreme, dreadful excitement and fermentation, this stirring up and mingling together all sorts of elements and ingredients, from every vein and course of society, the talents of all men are stretched and strained to the very highest; and by this violent, inflammatory process, good ultimately will be produced. To purify the national sewers, full of filth, stagnant for centuries, the exertions of great intellect, not of great virtues, are required. These are transitions necessarily accompanied with domestic insurrections and civil wars; and as liberty is said to expire under a military government, so, on the other hand, it will be seen, that an arbitrary government is often one of the phases or conditions of society in its progress towards freedom.

The attempt by Napoleon Bonaparte to subjugate Spain led to the independence of Spanish America. The connexion between this cause and effect is, at once, apparent, but it did not, probably, occur to the British ministry, in ordering Lord Wellington to proceed to the Tagus, instead of the Gulf of Mexico, that they were taking the most effectual measures possible for the liberation of one country and the emancipation of the other. The year 1808 is, therefore, properly the æra of Spanish American independence, a year remarkable for the general insurrection of Spain, and for the treaty of Bayonne, in which Charles IV. transferred to the Emperor Napoleon all his rights and titles to the throne of Spain and the Indies.\* The reader will observe, that this transfer included the colonies in South America, a stipulation by no means nominal, for measures were speedily adopted by the French to obtain actual possession of them. Napoleon, compelled to relinquish his foothold in Louisiana, was turning southward, and with the Andes and all South America before him, had little cause, indeed, to repeat the sublime regret, uttered by a great conqueror of antiquity. This splendid project, however, by no means impeaches the soundness of an opinion, entertained by that accomplished statesman, M. de Talleyrand, in regard to the subjugation of Spain, for the emancipation of South America by the French could have had no other effect than to increase the trade of the United States and Great Britain. But that a liberation formed a principal part of the Spanish plot will be seen in the following extracts of secret instructions given by

\* We insert the first article of this infamous bargain, perhaps one of the greatest diplomatic curiosities extant: "His Majesty the King Charles having had, during his life, no other object in view than the happiness of his subjects, and fixed in the principle, that the acts of a sovereign should be directed to no other end, and observing that the actual condition of the kingdom can lead only to dissensions, the more fatal as factions already divide his own family, has determined to cede, as he does cede by the present writing, to the Emperor Napoleon, all his rights to the throne of Spain and the Indies, as the only person that, in the present state of things, can restore and maintain order."

*"Joseph Napoleon to the commissary or principal agent, appointed by him at Baltimore, (M. Desmolard) and to the others, who, furnished with his orders, have gone to Spanish America for the purpose of revolutionizing it."*

"The object these agents are to aim at, for the present is no other, than that of manifesting to, and persuading the Creoles of Spanish America, that his imperial and royal majesty has solely in view the giving liberty to a people, enslaved for so many years, without expecting any return for so great a boon, other than the friendship of the natives, and the commerce with the harbours of both Americas; that to render South America free and independent from Europe, his said majesty offers all the necessary assistance of troops and warlike stores, *having agreed with the United States of North America to accommodate him therewith.* Every commissary or agent in chief, being acquainted with the district, to which he is deputed, and also with the character of its inhabitants, will have no difficulty in selecting proper persons, to give them the needful instructions for persuading the people, and pointing out to them the advantages they will derive from throwing off the European yoke. He will make them observe that large sums will remain and circulate in the American provinces, by suspending the profuse remittances which are continually making to Spain, and that their commerce will be increased and their ports be open to all foreign nations. He will dwell upon the advantages to be derived by them from the freedom of agriculture, and the cultivation of all those objects, at present, prohibited by the Spanish government, for instance, that of saffron, hemp, flax, olives, vines, &c. the benefit that will accrue to them from the establishment of manufactures of every sort, the great satisfaction and advantages of abolishing the monopolies of tobacco, gunpowder, stamps, &c. To obtain all which with facility, the people, being for the greatest part barbarous, the agents ought to be solicitous to render themselves acceptable to the governors, intendants, curates and prelates. They will spare no expense nor any other means of gaining their good will, especially that of the ecclesiastics, on whom they are to prevail to urge and persuade the penitents, when they come to confess, that they stand in need of an independent government, that they must not lose so favourable an opportunity, as that which now presents itself, and which the emperor Napoleon affords them,

who, they are to make the people believe, is sent by God to chastise the pride and tyranny of monarchs, and that it is a mortal sin, admitting of no pardon, to resist God's will. They will also remind the Indians circumstantially of the cruelties the Spaniards employed in their conquests, and the infamies they committed towards their legitimate sovereigns, by dethroning them; by taking away their lives or enslaving them. They will direct the people's attention to the superior talents of the many neglected Creoles and people of merit, contrasted with the European public officers and ecclesiastics, which will make apparent the hardships they suffer, and will enable them to draw a parallel between the talents and merits of the Creoles and those of the European officers. They will set before their eyes the difference between the United States and Spanish America, the comforts, which those Americans enjoy, their progress in commerce, agriculture and navigation, and the pleasure of living free from the European yoke, and being left solely to their patriotic and elective government.

"My agents will refrain from declaiming against the inquisition or the church, and in their conversations, rather insist upon the necessity of that holy tribunal and on the usefulness of the clergy. Upon the insurrectional standards or banners is to be inscribed the motto, 'Long live the Catholic, Apostolic and Roman Religion, and perish the bad government.'"

It will not be expected from us to give an account of the progress of this business, though we shall take this opportunity to present an extract, from a remonstrance of the American deputies to the Spanish Cortes in August 1811, containing a relation of the periods and immediate causes of the revolution in the different provinces.

"In Carraccas the invasion of the Andalusian provinces by the French, and the dissolution of the Central Junta gave rise to the revolution; in which, without any effusion of blood, the authorities were deposed on the 19th of April 1810, and a Supreme Junta was created for the purpose of governing the province, and in order to preserve its existence and guard its security, as fully expressed in the proclamation then issued."

"In Buenos Ayres the purport of the same news communicated by viceroy Cisneros and his calling together a congress in order to

adopt measures of precaution on the 25th of May 1810 produced a provisional junta, till a congress was formed of all the deputies of the provinces.'

"— 'In New Grenada the imprudent conduct of the Corregidor El Socorro, by causing his troops to fire on the unarmed citizens, of whom eight were killed, occasioned the first movement on the 3d of July 1810; the immediate consequences of which were the imprisonment of the Corregidor and his satellites.'

"— 'In Santa Fé de Bogotá a private individual passed by the shop of an European, who insulted him with words injurious to the Americans in general; and parties, siding with the principals in the quarrel, produced dissensions and gave rise to the eventual creation of a junta on the 2d July 1810.'

" 'The offensive measures of the governor of Carthagena, and the odious divisions he attempted to sow between the Europeans and Americans, ended in a provisional junta on the 18th August 1810.'

" 'In Chili the people were so much roused and irritated by the arbitrary acts and extraordinary violations of governor Carrasco (afterwards tried at home for his conduct) that he found himself under the necessity of resigning his command, and a junta was consequently created on the 18th September 1810.'—A singular circumstance is, that this was the only junta the government of Spain ever acknowledged.

" 'In Mexico the arrest of viceroy Iturrigaray on the 15th September 1808, executed by a faction of Europeans, excited a strong rivalry between the latter and the Americans, which spread gradually throughout the kingdom. The death of several Americans and the arrest of others transfused still greater irritation amongst the latter, which added to the impolitic measure of viceroy Venegas, carving out rewards and distinctions for the authors and accomplices of the European faction, produced a revolt in the town of Dolores on the 14th September 1810, which soon extended to the whole country.' "

An extreme variety of fortune has attended the arms of the revolution party, from the commencement of the struggle till 1822, when the only places on the continent, left in the hands of the royalists were Porto Cabello in Venezuela and

the Isthmus of Panama in New Granada.—Peru appears to have been the principal seat of royal, and Venezuela of republican principles. This war for independence has differed from that of the North American Colonies, not only on account of the remarkable vicissitudes that have marked its progress, the disjointed manner, in which it has been carried on, the shocking cruelties committed by both parties; but it has partaken much more of the nature of a civil conflict. Here the revolution was a general concern, conducted by an organized confederacy for the whole country and for a specific object;—on the other hand, the Spanish Colonies have contended separately with a singular variety of fortune, never under the direction of a single government, usually without even the advantage of any concert or previous arrangement, and without any single and general purpose; some provinces, proposing merely to retain the government for the benefit of the monarch, others to establish at once a republic.

Great Britain, having embarked with Spain in the war against France, necessarily withheld the aid and influence, (she was once disposed to lend) from colonies, contending against her ally, the parent state. The advantages derived from engaging France in the fatal campaigns in the Peninsula were, perhaps, foreseen; at any rate, they are now acknowledged; and so entirely was all public notice of the concerns of the colonies dropped by England, that in 1810 the Junta had the madness, even, to declare a war against Venezuela. And the British minister, in 1811, having made an attempt to procure from the Cortes, assembled in Cadiz, the benefit of a free trade to the South American provinces, the Consulado, or board of trade, immediately adopted and published the following declaration:

“That a free trade with the American Provinces would work a ruin greater than that, which Spain then experienced—that those, who were desirous of establishing it were impostors, deserving of exemplary punishment and perpetual banishment—that the political existence of Spain depended on this question—that the names of those, who proposed so disastrous a measure, ought to be transmitted to posterity, that they might be mentioned by distant ages



with the indignation, they justly merited—that Spain would be ruined and made the tool of foreigners—that her merchants and manufacturers being destroyed, she, herself, would lose all freedom,—that in short this commerce would be subversive of order, morality, religion and society.”

We shall now speak more particularly of the transactions of this government with the new states, though we believe it proper and necessary to give some general account of the condition of the Provinces, when the attention of this country was first directed to them, and of the principal relations or connexions they had held with the European powers. It will be observed that at the date of the first intercourse of this republic with South America, neither freedom nor independence were, by any means, new topics there. All men of liberal sentiments and just notions of polity viewed with interest and indignation the abuses, to which the Spanish colonies had long been subjected,—the neglect of the mines,—the prohibition to teach the liberal arts and sciences,\* restricting education to the learning of the Latin grammar, the absurd philosophy of the ancient schools and civil and ecclesiastical jurisprudence,—the most gross and inexorable monopoly of commerce by the metropole, making it even death for an inhabitant of the colonies to trade with a foreigner—and a monopoly, equally severe and wicked, by the Spaniards of old Spain of all offices, both in the church and of a civil or military character, though by the constitution of the Kingdom of the Indies, Americans were equally entitled to hold them. Since the dominion of the Spaniards one hundred and seventy viceroys have governed in that country ;—of these four only have been Americans, and of six hundred and ten captains general and governors, all but

\* Humboldt found, particularly in Mexico and in the large towns in the northern portion of the southern continent, men of cultivated understandings and of a philosophical turn of mind ;—the esprits forts of the new world. But their pursuits were chiefly confined to the exact sciences and to those speculations, that are rather amusing and ingenious than accompanied with any practical good effects to society.

fourteen have been Spaniards. These considerations may awaken the deepest emotion, but they can never, with propriety, enter into the austere, unyielding policy of a government, that rigidly discards all foreign sympathies, and never ventures to cheer, with more than a faint hope, the endeavours of other people, even to obtain freedom and independence. On the present occasion a doubt may, well, be suggested, whether even a great interest was awakened generally in the citizens of this country. The ill success of the French, the shocking abuses of the patriot name and cause, and the fact, now well understood, that independence does not always lead to freedom, have rendered the Americans cautious, and not always disposed to yield to very flattering anticipations, when the word revolution is pronounced. At any rate, no material excitement existed, and the government was left free and unembarrassed to pursue its steady course of good faith and exact neutrality towards Spain and of justice and policy towards the colonies. This government, differing in its form and origin, and application of power from all others, has never played the part of a political apostle ; nor are we aware, that any similarity, possibly, existing between our institutions and those of the states of South America, at all hastened, in any instance, the acknowledgment of their sovereignty. Those commonwealths, when in a condition to maintain their independence, have an obvious right to present their claims to the consideration of other nations, but to the latter is reserved the privilege of recognising new states when established, and of selecting the period, when the act can be performed with safety and to their own advantage. The United States, at an early hour in their political existence, were invited to acknowledge communities, at one time, colonies with themselves. But neither the vicinity of some portions of their respective territories, nor the circumstance of being members of the same continent, nor the benefits to be derived from commercial relations, nor the similarity of their struggles for independence, appear in the least, to have influenced the definitive arrangements of this government. On the contrary, the

business was conducted with the utmost caution and circumspection, and nothing done to give offence to Spain, or awaken in other nations, the slightest suspicion of the loyalty, with which this country was determined to adhere to its system of neutrality. The brief relation, we are about to give, of the transactions, that led to the acknowledgment of the South American states, will leave no doubt of the prudence and deliberation, with which the government proceeded.

The Provinces of Buenos Ayres made the most rapid and solid progress towards emancipation. Their declaration of independence\* was communicated to the government by Don Manuel H. de Aguirre, who had arrived in this country as a public agent from La Plata and private one from Chili. He was not, however, furnished with a commission of min-

\* "We the representatives of the United Provinces of Rio de la Plata in general Congress assembled, invoking the Supreme Being, who presides over the universe, and calling on heaven, earth and mankind to witness the justice of our cause in the name and in virtue of the authority of the people, whom we represent :

"Solemnly declare, that it is the unanimous will of the people of these Provinces to break asunder all the bonds, which unite them with the Kings of Spain, to reinstate themselves in the enjoyment of the rights of which they have been deprived, and to raise themselves to the high rank of a free and independent nation, capable of giving themselves such a government, as justice and imperious circumstances may require. Authorized by the United Provinces in general, and by each one of them in particular to declare and lay them under the obligation to support this independence, we hereby pledge their lives, fortunes and sacred honour.

"Mindful of the respect due to those nations, which take an interest in our fate, and conscious of the necessity of declaring the weighty reasons, which have impelled us to this act, we resolve that a manifest setting them forth be immediately made public.

"Given and signed in the hall of our sittings, sealed with the seal of the Congress and countersigned by our secretaries in the city of Tucuman this ninth day of July 1816.

"F. N. DE LAPRIDA, *President.*

"J. M. SERRANO, *Secretary.*

"J. J. PASSO, *Secretary.*"

ister nor with a power to negotiate ; and there was no intimation in his letter of credence that he was even authorized to ask the acknowledgment of his government, though this matter was much pressed in his subsequent correspondence with the Department of State. We may mention in this connexion that Don Martin Thompson, an individual sent by the government of La Plata to this country the succeeding year, had been dismissed by the Director Puerreydon for having transcended his powers. Several letters, in the course of 1817, 1818, were addressed to the Secretary of State by Don M. H. d'Aguirre, soliciting the acknowledgment of the Provinces of Buenos Ayres, formerly the viceroyalty of La Plata. No answers were given to those letters, though conferences were held with him. The President declined to enter into any arrangements with this individual, for he did not appear furnished with powers to negotiate, and the independence of the provinces was far from being established at that period ; several portions of it being in possession of the Spaniards, Montevideo of the Portuguese, and the eastern shore, under the government of General Artigas, who though independent of the mother country, still maintained his independence of the Provinces of Buenos Ayres.\* †

The United States had no intention of assisting any of the South American provinces, or of furnishing either money or munitions of war. There was no commercial advantage to be derived from the measure, that could at all repay the risk of undertaking it, or, if the people of this country could have been persuaded to venture upon this dangerous, aspiring policy, did the condition of those colonies present the slightest political temptation. France, in forming an alliance with the

\* There is a slight apparent inaccuracy in the text. Venezuela, was, in reality, the first Province, that sent to this country agents at the time of its first emancipation,—John Vincente Bolivar and Talisfero Orca, both furnished with credentials and competent powers to transact business. But they had no official intercourse with the government, and the restoration of the royal authority shortly after in that territory put an end to their diplomatic character.

United States and acknowledging their independence at an early period of the war, was led to this step by obvious and immediate political considerations and the expectation of future commercial benefits. Besides, to what dangers did the movement, on the part of France expose her?—perhaps to a fresh war or new confederacies;—neither event, uncommon in the complicated and venturesome game the powers of Europe had been engaged in for nearly a century. Such bold casts do not suit the quiet, simple drift and demeanour of this government. No eagerness was, therefore, manifested in acknowledging the most forward of the new states, though the application of Don Manuel Aguirre had scarcely been declined, when a renewed consideration of the same claims arose in the person of David C. de Forrest, who solicited the government to allow him to be admitted as a Consul General. This last application was made in May 1818, but, as it was not ascertained, whether the province claimed an entire or partial independence, the President did not think it expedient to accede to the proposition. Spain, it seems, had still pretensions to the sovereignty, and it was the intention of Buenos Ayres to offer special commercial favours to her for the purpose of obtaining a release from them. Till it was determined, what would be the extent or character of these privileges, no nation could prudently lay itself under the obligation of encountering the commercial disabilities, necessarily flowing from such an arrangement.

“ It had not been intended to suggest to Mr. de Forrest, that it was in any manner incompatible with the independence or sovereignty of a nation to grant commercial advantages to *one* foreign state, and to withhold them from another. If any such advantage is granted for an equivalent, other nations can have no right to claim its enjoyment, *even though entitled to be treated as the most favoured nations*, unless by the reciprocal grant of the same equivalent. Neither had it been meant to say, that a nation forfeited its character of acknowledged sovereignty, even by granting, without equivalent, commercial advantages to one foreign power and withholding them from another. However absurd and unjust the policy of a nation, granting to one and refusing to another such gra-

tultous concessions might be deemed, the questions, whether they affected its independence or not, would rest upon the nature of the concessions themselves. The idea meant to be conveyed was, that the reservation of an indefinite right to grant hereafter special favours to Spain for the remuneration of her claims of sovereignty, left it uncertain, whether the independence of Buenos Ayres would be complete or imperfect, and it was suggested with a view to give the opportunity to the supreme Director of explaining his intentions in this respect, and to intimate to him that while such an indefinite right was reserved, an acknowledgment of independence must be considered as premature. This caution was thought the more necessary, inasmuch as it was known that, at the same time, while the supreme Director was insisting upon this reservation, a mediation between Spain and her colonies had been solicited by Spain, and agreed to by the five principal powers of Europe, the basis of which was understood to be a compromise between the Spanish claim to sovereignty and the colonial claim to independence."

We shall not longer detain the reader with an account of Mr. de Forrest's application, particularly as he "declares himself unauthorized to agitate or discuss the question with regard to the recognition of Buenos Ayres as an independent nation." Some observations, however, may be proper with reference to circumstances alleged by him, as arguing that a consul general may be accredited without acknowledging the independence of the government from which he has his appointment. The consul of the United States, who has resided at Buenos Ayres, had no other credential than his commission. It implied no recognition by the United States of any particular government, and it was issued before the Buenos Ayres declaration of independence, and while all the acts of the authorities there were in the name of the King of Spain.

"During the period, while this government declined to receive M. de Onís as the minister of Spain, no consul received an exequatur under a commission from the same authority. The Spanish consuls, who had been received before the contest for the government of Spain had arisen, were suffered to continue the exercise of their functions, for which no new recognition was necessary. A similar remark may be made with regard to the inequality alleged by Mr. de Forrest to result from the admission of Spanish consuls

officially to protest before our judicial tribunals, the rights of Spanish subjects generally, while he is not admitted to the same privileges with regard to those of the citizens of Buenos Ayres. The equality of rights, to which the two parties to a civil war are entitled in their relations with neutral powers, does not extend to the rights, enjoyed by one of them by virtue of treaty stipulations, contracted before the war, neither can it extend to rights, the enjoyment of which essentially depends upon the issue of the war. That Spain is a sovereign and independent power, is not contested by Buenos Ayres and is recognised by the United States, who are bound by treaty to receive her consuls. Mr. de Forrest's credential letter, asks that he may be received by virtue of a stipulation, in supposed articles concluded by Mr. Worthington, which he was not authorized to make, so that the reception of Mr. de Forrest, upon the credential on which he founds his claim, would imply a recognition not only of the government of the supreme Director Pueyrredon, but a compact as binding upon the United States, which is a mere nullity.

"Consuls are, indeed, received by the government of the United States from acknowledged sovereign powers, with whom they have no treaty. But the exequatur for a consul general can obviously not be granted without recognising the authority from whom his appointment proceeds as sovereign. 'The consul,' says Vattel (book ii. chap. 2. § 34) 'is not a public minister; but *as he is charged with a commission from his sovereign*, and received in that quality by him, where he resides, he should enjoy, to a certain extent, the protection of the law of nations.'

"If from this state of things, the inhabitants of Buenos Ayres cannot enjoy the advantage of being officially represented before the courts of the United States by a consul, while the subjects of Spain are entitled to that privilege, it is an inequality, resulting from the nature of the contest, in which they are engaged, and not from any denial of their rights, as parties to a civil war. The recognition of them, as such, and the consequent admission of their vessels into the ports of the United States operates with an inequality against the other party to that contest and in their favour."

An application, made the same year from Venezuela, was speedily disposed of. We shall present a relation of this transaction in the words of the parties.

"Most Excellent Sir,—Having been appointed by the government of the Republic of Venezuela its representative near the United States of North America, I have the honour to inform you of my arrival in this city, for the purpose of discharging the trust committed to me: To effect this I have to request, that you will be pleased to inform me, at what time it will be convenient for you to afford me an opportunity of presenting my respects to you personally, and of communicating to you the object of my arrival in the federal city. I have, &c.

"LINO DE CLEMENTE.

"Washington, 11th December, 8th year of the Republic, A. D. 1818.

"The Secretary of State of the U. S. North America."

"Sir,—Your note of the 11th inst. has been laid before the President of the United States, by whose directions I have to inform you, that your name having been avowedly affixed to a paper, drawn up within the United States, purporting to be a commission to a foreign officer for undertaking and executing an expedition, in violation of the laws of the United States, and, also, to another paper avowing that act, and otherwise insulting to this government, which papers have been transmitted to Congress by the message of the President of the 25th of March last, I am not authorized to confer with you, and that no further communication will be received from you at this department.

"I am, with due consideration, sir, your very obedient servant."

A dissolution of old governments, especially those of a corrupt and oppressive description, turns loose a set of pirates and adventurers to waste and plunder the legitimate commerce of neutral nations. A revolution collects them, as the dead body of a jaguar or crocodile draws together the condors and other carrion birds of prey in South America. With the patriot flag at their mast head, and in the name of liberty and independence pillaging, and often murdering the peaceable trader, who meets with a buccaneer under the banner, that he welcomed as the emblem of a free and rising republic. To this sort of patriotism we are indebted for the establishments of Amelia Island, Galvezton and Barrataria, in which the Cacique of Poyas, citizen Gregor



McGregor, brigadier general of the armies of the United Provinces of New Granada and Venezuela, and Don Lewis Aury, citizen of the new republics of Mexico and New Granada, commodore in the navy of the said republic, figured in a conspicuous manner. Some of these persons appear to have been furnished with a sort of commission from the government, above mentioned, to effect a revolution in the Floridas, but it was probably an enterprise, concerted by individuals, and for purposes, that would not much have promoted the cause of freedom in any portion of the globe. At any rate, the enterprize was disavowed by the governments of Buenos Ayres and Venezuela, and arrangements having been notoriously entered into in the United States, equally in violation and in defiance of positive laws, a suitable force was employed to dispossess the invaders.

We have now reached the tenth year of this war in South America for independence. Those, who have looked into the relation of events there, will be persuaded, we have no doubt, that the full and happy accomplishment of the great object, for which those people contended, was not retarded a single hour by the power of the mother country. The remark is probably more true of that portion of the continent than of this, that when the revolution began, it was neither the general expectation nor intention in any of the provinces that it should end in a separation. In the outset, the necessity of self-government was forced upon them by the situation of the Metropole; and from about the years 1808 and '9, to the year 1821, a contest of the most mixt and singular character raged there, partaking of great vicissitudes, occasionally of a slight, feeble and long remitted resistance, but chiefly protracted and envenomed by cruel and profligate conflicts and commotions.

“Without travelling through a historical detail of events, it will be sufficient to observe, that in Chili as in Buenos Ayres, the moving causes of the revolution were not the oppressions of the Spanish monarchy. The people of Chili were not first awakened by persecutions and sufferings to a sense of their power and their rights, they had always been quiet for more than two centuries

and an half. The united vigilance and cares of church and state had tamed every restless spirit and checked every wayward thought. The rulers and the pastors of the people had diligently removed every hope of liberty, and passive obedience had become a habit. When the wars, arising out of the French revolution, involving and disturbing all the nations of Europe, overwhelmed the peninsula of Spain, drove the ancient dynasty from the throne, produced a struggle for the sceptre and broke loose at once those carious bonds of mere prejudice and superstition, which held the various parts of that great monarchy together, such was the state of the mother country, that it was manifest the colonies could no longer be governed as formerly. Each one consequently, began calmly to think of self-government, not as a matter, to which he had been excited and persecuted, nor in a spirit of rebellion, but as a deplorable act of necessity in obedience to a melancholy fatality, which had rent asunder the several parts of a great empire, that had been, until then, so quietly and happily united."

Disappointment has, undoubtedly, been felt at the slow, uncertain progress of this revolution, but in the history of civilized people we meet with few cases of more deplorable servitude both mental and of the body ;—a whole population, wasting and pining away in wretched ignorance, and most cruel inability to profit of the singular advantages, a rich and beautiful country afforded them on every side. Throughout this whole continent there was not a newspaper, nor a periodical publication, except of a scientific kind, and the authors, allowed, were confined to the strictest rule of the Roman Index.\* Humboldt seemed to think the whole people absorbed in a contemplation of the jaguars, crocodiles, earthquakes ;—of the different races of mosquitoes, that succeeded each other at stated periods night and day, and the journeys of the king between the Escorial and St. Ildefonso. No one is surprised, that the people of the United States, in whose bone and muscle liberty and freedom of enquiry were born and bred, engaged from the very first steps, set by the puritans on these inhospitable shores, in continued discussions,

\* Robinson Crusoe was among the prohibited books ; it is difficult to give a reason ; few works are founded in a better moral.

concerning all sorts of rights, that man in this world can possibly pretend to, possessing every advantage of education and reading, that modern and ancient times could furnish them, should be adapted and fashioned, in every lineament and proportion, for immediate self-government. On the other hand, it is equally clear, that a population such as South America contained in 1810, upon whom every sort of slavery had rested with the heaviest hand for three hundred years, and composed, at least, of five different races of men, cannot be, at once, as it were, with the sound of a trumpet, roused from a long debasing lethargy of all the faculties, revived, refreshed and exalted into the moral and enlightened citizens of a representative republic. They remind one of the story of the seven sleepers of Ephesus, who, at the end of two centuries, appeared again in the world with their uncouth, singular dress, and obsolete language, offering for bread an ancient medal of Decius, as the current coin of the empire. The revolution in South America can be regarded in no other light than as the first scene in the political regeneration of that people. Liberty, the most precious thing in the possession of man, would indeed, be purchased at a cheap rate, if the Spanish Americans were at a single bound to pass to the full enjoyment of it.‡

Not only a remarkable ignorance of passing events has long prevailed in the Spanish colonies, to the degree that Humboldt met with an intelligent Frenchman on the borders of the Orinoco, who seemed unacquainted with the great transactions, that have taken place in Europe the last thirty years, but from the same causes, acting in a contrary direction, it has been found extremely difficult to obtain accurate information (in some cases no information at all could be procured) of the political condition of those countries. Not satisfied with the representations of the colonial agents, but convinced, that some progress towards independence had been made, and desirous to secure for this country their full and just share of any commercial advantages, that might be offered, the government determined in 1817,\* to despatch

\* In 1811 and 1812 Mr. Poinsett and Mr. Scott had been despatch-

three special commissions to South America for the single purpose of obtaining some just and precise notions of the real situation of affairs there. Messrs. Theodorick Bland, Cæsar A. Rodney and George Graham were selected, and sailed in a frigate in December 1817, for the River La Plata, with instructions to examine into the condition of Buenos Ayres and Chili. The latter business was undertaken by the first named individual. Nothing, we believe, contained in the reports, transmitted by these gentlemen, inspired regret at the delay of the government in the recognition of the new states. But it was quite obvious, that at some period, probably not distant, a portion, at least, of the vast Spanish American empire, would fall off and separate from the ancient dominion of the mother country, and acquire (when all the political jaundice, that showed itself in wars, juntas and legislative assemblies had been dissipated or re-absorbed) some sort of solidity and permanency. The attention of the government was, therefore, fixed with a steady, watchful eye on the Provinces, particularly as undoubted information was obtained of a negotiation in progress between France and Buenos Ayres; and from the prolonged residence in England of Mr. Rivadavia (a person of great consideration) some arrangement was, also, in all probability, concerting with that power, which, on account of its commercial preponderance, was not without an alarming interest to the United States. Indeed, this government early proposed both to France and England to recognise, in concert, the independence of the Provinces of the River La Plata.

Not discouraged by the unsatisfactory result of the first commission, the government appointed, in the summer of

ed as political agents to Buenos Ayres and Venezuela. It was important not only to have early and authentic information of the state of the countries, but the movements of some European cabinets there, particularly that of St. James, excited constant and great uneasiness. M. de Chasne, an emissary of the Emperor Napoleon, was known to have been in Buenos Ayres as early as 1808. He was, however, sent away.

1820\* Messrs. T. B. Prevost and John M. Forbes agents for commerce and seamen for Chili and Buenos Ayres. The reader will observe, that these individuals were not furnished with powers or instructions in any sense called diplomatic, though directed to make representations (as will be seen in the paragraph we are about to recite from a letter from the department of state) on subjects of obvious interest to this country.

“The commercial intercourse between the United States and those countries, though not very considerable, is deserving of particular attention. Whatever accurate information you can obtain, relating to it, as well as to the commerce of those countries with other nations and to their internal trade, will be particularly acceptable. The condition of our seamen there will, also, deserve your notice. The performance of these duties will involve also the political relations between those countries and the United States. In the progress of their revolution Buenos Ayres and Chili have, to the extent of their powers, and, indeed, far beyond their natural means, combined maritime operations with those of their war by land. Having no ships or seamen of their own, they have countenanced and encouraged foreigners to enter their service, without always considering how far it might affect either the rights or the duties of the nations, to which those foreigners belonged. The privateers, which, with the commissions and under the flag of Buenos Ayres, have committed so many and such atrocious acts of piracy, were all either fitted out, manned and officered by foreigners at Buenos Ayres, or even in foreign countries, not excepting our own, to which blank commissions both for the ships and officers were transmitted. In the instructions to the late Commodore Perry, which his lamented decease prevented from being executed by him, and a copy of which is now furnished to you, certain articles of the Buenos Ayrean privateering ordinance were pointed out, particularly liable to the production of these abuses, and which, being contrary to the established usages among civilized nations, it was hoped, would have been revoked or made to disappear from their otherwise unexceptionable code. These instructions were renewed to Commodore Morris, but the time of his

\* Mr. Hogan was commercial agent in 1821; at Valparaiso.

stay at Buenos Ayres was so short, and he was there at a moment of so great a change in the ruling power of the state, that although he communicated to the then existing Director, the substance of the representations, which Commodore Perry had been instructed to make, we know not that it was attended with any favourable result. You will consider the parts of Commodore Perry's instructions, which may be still applicable on your arrival in South America, as directed to yourself, and should you proceed to Chili, will execute them there, no communication upon the subject having yet been made there. Among the inconveniences, consequent upon this system of carrying on maritime warfare by means of foreigners, has been occasionally and to a considerable extent, the enticement of seamen, belonging to merchant vessels in the ports of Buenos Ayres and Chili from their engagements, to enlist them in privateers or other armed vessels of those countries. In attending to the numerous trials and convictions for piracy, which have recently afflicted our country, and cast an unusual gloom over our annals, you will remark that a great proportion of the guilty persons have been seamen thus engaged—foreigners at Buenos Ayres, or enlisted in our own ports in violation of our laws."

The exertions of Mr. Forbes were so far successful, as to procure a decree, issued by the government of Buenos Ayres on the 6th of October 1821, forbidding the granting of privateer commissions.

We have, hitherto, not had occasion to mention Peru, where, before 1819, 20, no revolutionary movement took place. This backwardness is, we believe, fully explained in the following paragraph from a letter of an intelligent gentleman, well acquainted with the situation of the Spanish Provinces.

"The landed estates are in the hands of large proprietors and are cultivated by slaves. They are fearful that an attempt to change the form of government would be attended by a loss of their property, and from the great number of blacks and mulattoes in this viceroyalty, the contest would probably terminate in the same manner as the contest of St. Domingo."

So far from taking any part in the republican movements of Chili, Peru even in 1813, sent an army into that vice-

royalty and reestablished the royalist government. But in 1817, 18, the Peruvians were expelled by General St. Martin\* with an army from Buenos Ayres, who succeeded in the summer of 1821, after defeating Canterac, La Serna and other Royalist officers, in taking Lima and finally Callao, the only place remaining in possession of the King's forces. The independence of the Province was declared July 15, 1821. We give in a note a copy of the manifest.† We read, perhaps, with deeper feeling a narrative of events in Peru from the circumstance, that this province was the scene of the bloody, cruel and treacherous, though remarkable exploits of Pizarro, of the death of Atahualpa on

\* This distinguished man, now so conspicuous in the central American Provinces, was born in Paraguay, went early to Spain, was five years in the military school of Madrid, went into the army in 1808, and was at the battle of Baylen, as aid de camp to General Conpigny. He remained in Spain till 1811, where he rose to the rank of colonel, principally in consequence of his brilliant conduct at the battle of Albuera; shortly after he went to London and thence to Buenos Ayres. His celebrated victories in South America are Chacabuco the 12th Feb. 1817, and Maypu early in 1818.

† "*Act of the independence of Peru.*

"In the royal city of Peru, 15th July, 1821.

"The Señors, who compose it, having yesterday assembled in the most excellent Senate with the most excellent and most illustrious Señor, the archbishop of this holy Metropolitan church, the prelates of the religious convents, titulars of Castile and various neighbours of this capital, for the purpose of fulfilling, what had been provided in the official letter of the most excellent Señor, the general in chief of the liberator army of Peru, D. José de San Martin, the contents of which were read, and persuaded of the soundness of the same, containing what persons of known probity, learning and patriotism, who inhabit this capital, would express, if the general opinion for independence had been resolved on, which vote will serve as a guide to the said General for proceeding to take the oath: all the Señors agreeing for themselves and satisfied of the opinion of the inhabitants of the capital, said, that the general will was decided for the independence of Peru, of the Spanish dominion and of any foreign dominion whatever, and that they would proceed to sanction the same by means of a solemn oath."

burning coals, and of the dominion of the children of the sun, whose last descendant, Tupac Amaru perished in 1781, the victim of an unsuccessful insurrection of the Indians against the Spaniards.\*

The first symptoms of a revolution in Chili, which began early, appeared in September 1810, and are thus delineated by an individual, who has been much in that part of South America.

“The Junta or Congress, assembled in Chili in eighteen hundred and ten, was much influenced in this view of the subject, by a strong sentiment in favour of the mother country. But there were many men in it, and in the country of much capacity and intelligence, who clearly saw at that day, that the only alternative allowed to it, was absolute independence or colonial despotism, who admired the political example and precepts of the United States, and who regarded that as the favourable moment for giving a new and improving direction to the destinies of their country, which ought not for a moment to be lost. At the head of this party was the venerable but unfortunate Don Ignacio Carrera and his sons. There was another party who, swayed by old prejudices, were disposed to compromise. Don Juan Egana, a lawyer of eminence, and who is one of the commissioners appointed by the present Director to draught a constitution for the state, was of this party. He drew up a project of a constitution in the year eighteen hundred and eleven and submitted it to the Congress, then in session, who ordered it to be published for information and discussion. In this project, which asserts that Chili should have a government of its own, free trade, &c. the idea of a political reunion with

\* The revolt of Jose Gabriel Condorcanqui, called the Inca Tupac Amaru, lasted two years. He had received a careful education at Lima, and became disaffected, because the court of Spain refused him the title of Marquis d'Oropesa, which belonged to the family of the Inca Tupac and Sayri. He was taken prisoner and put to death, and such was the respect of the Peruvians for the descendant of their Incas that they fell upon their knees as he was carried through the streets to execution. This rebellion took place at the time of the revolution in North America, and during many months a large portion of the Spanish possessions in Peru was in great jeopardy.



Spain and the other provinces of America, when circumstances would admit, is provided for and continually held out.”—“Under the first government of the patriots many, who had offended the reigning party, which was at times the Carreras, and at other times the Larrains with O’Higgins at their head, were banished to the other side of the mountains, and in consequence of these internal divisions a principal portion of the patriot forces of Chili, under the command of the present Director, which had made a stand at the town of Rancagua, were there attacked and defeated by the royalists on the 2d day of October 1814, after which the remnant of the patriot forces, with all who could, and deemed it prudent, fled in every direction over the Andes. This defeat of Rancagua closed, what is called, the first epoch of the patriot government. The Chileno refugees and exiles of all parties rendezvoused at Mendoza. General San Martin, who was then there, made common cause with O’Higgins and the Larrain faction, and undertook to reorganize an army from these motley and shattered materials. He procured arms and a reinforcement of about two thousand free negroes from Buenos Ayres. O’Higgins was made brigadier general, but almost all the other officers of the army were either citizens of Buenos Ayres or commissioned and appointed from thence. There was no Chileno officer in it, higher than a captain, except O’Higgins. This army thus composed, amounting in number to about four thousand, was led over the Andes by General San Martin through the passes of Putaendo and Patos. With some skirmishing in the pass of Putaendo, but without any material loss the whole arrived safe in the valley of Aconcagua near the city of St. Filipe, and pushing forward toward Santiago, it was met by the royal army under the command of Marco at the foot of the Cuesta, which enters into the valley of Chacabuco. A battle ensued on the twelfth of February 1816, Marco was captured and his whole army cut to pieces or made prisoners. Thus the patriots regained Chili. O’Higgins was made Supreme Director, as he says in his manifesto, by the voice of the capital and the state : but every one will perceive that this army, at least, had its influence in the appointment.

“This army has been occasionally divided ; its parts have been distinguished by various names ; it has sustained many losses and been often recruited ; but it has received no aid from abroad : it

has been supported and strengthened altogether in Chili: it is now called 'the united army of the Andes.' As it fell back on the approach of the royal army under the command of Osorio it was said to have sat down at Caucha-rayada nine thousand strong. It may have then consisted of that number: but on the night of the nineteenth of March last it was attacked by the royal army, panic struck, and almost totally dispersed. It rallied again in the valley of Santiago. The royal army under Osorio came up, the troops of which, composed principally of veterans from Spain, had been transported by the way of Cape Horn to Lima, and thence to Concepcion, and with some Chilotes and other auxiliaries of the country, was about five thousand strong. The rallied patriot army could not have exceeded according to any account six thousand men, almost all raw troops or militia, except the Buenos Ayres negroes. The royalists had a decided advantage of the ground and twelve pieces of artillery more than the patriots. In this situation the two armies met about ten miles to the southeast of the city of Santiago on the plains of Maypu, and early on the morning of the fifth of April a most desperate conflict commenced. The royalists charged fiercely, the negro troops\* flinched, but the Chilenos, the militia no less than the rest, animated by one invincible fervour of patriotism, with shouts of *Vive la Patria*, carried all before them sword in hand or at the point of the bayonet. The field was literally strewn with heaps of slain. The combat continued with various fortunes until late in the afternoon. It is said, that, for the numbers engaged, there never was a more obstinately contested combat, or a more bloody battle, fought in any part of the world. Of the royal army half were found dead or wounded on the field, and all the rest made prisoners. The loss sustained by the patriot

\* In order to explain the way in which negro troops came to be employed, it is necessary to state, that one of the last acts of the Assembly of Buenos Ayres was to manumit the offspring of all slaves after February 1813, and to emancipate all slaves brought into the territory after that period. Slave holders were obliged to deliver every third slave for the ranks of the republican army. On this occasion many were manumitted on condition they served during the war, and two regiments, called *Liberti* and officered by whites, were formed of them.

army is estimated at about fifteen hundred. The victory of Maypu has completely confirmed the independence of Chili.”\*

\* “*The Supreme Director of the state.*”

“Force has been the supreme reason, which, during upwards of three hundred years, has maintained the new world under the necessity of reverencing, as a dogma, the usurpation of its rights and seeking therein the origin of its most important duties. It was evident that a day would come, when this enforced submission would cease; but in the mean time it was impossible to anticipate it: the resistance of the inferior against the superior, stamps with a sacrilegious character, his pretensions and serves only to discredit the justice, upon which they are founded. For the 19th century was reserved the spectacle of hearing innocent America claim her rights, and show, that the period of her sufferings could continue no longer than that of her debility. The revolution of the 18th September of 1810, was the first effort Chili made towards accomplishing these high destinies, to which she was called by time and nature. Her inhabitants have given since proofs of the energy and firmness of her will, scorning all the vicissitudes of war.

“But the actual circumstances of the war, not permitting the convocation of a national Congress to sanction the public votes, we have ordered that a register should be opened, in which all the citizens of the state might declare for themselves, free and spontaneously, their votes for the urgent necessity of the government proclaiming immediately the independence or for delaying it, or for the negative; and having found, that the generality of the citizens have irrevocably decided by the affirmative this proposition, we have thought proper, in the exercise of the extraordinary power, with which we have been vested by the people for this particular case, to declare solemnly in their names, in the presence of the Almighty, to make known to the great confederation of mankind, that the continental territory of Chili and her adjacent islands form, in fact and right, a free, independent and sovereign state, and are forever separated from the monarchy of Spain, and fully qualified to adopt the form of government most convenient to their interests.”

“Given at the Directorial Palace of Concepcion on the 1st January 1818, signed with my hand and countersigned by our ministers and secretaries of state for the department of state, treasury and war.

“BERNARDO O’HIGGINS.

“Miguel Zanartu, Hipolito De Villegas, Jose Ignacio Zenteno.”

Before closing this narrative, we take an opportunity to extract, from a letter of Mr. Forbes, a well written account of the death of the last surviving Carrera, who was shot in 1821.

"Among the important events, which have occurred on this side of the mountains, I must not omit to notice the total destruction of the party of Jose Miguel Carrera, and the public execution of that active and extraordinary man. On the 4th of this month, Carrera was shot on the public square at Mendoza; he died with the most heroic courage, asking the only favour of his conquerors, that he might be buried in the same grave with his two brothers, who were shot in the same city on a former occasion. It would be well for humanity, if the story of the event stopped here; but I again have to state another act of savage ferocity; the murdered body of this brave and distinguished man was shockingly mutilated, his head was cut off and exposed in the square of Mendoza, his right arm was sent to the governor of Cordeva, and his left to the punta San Luis. When these particulars were known here, they excited a sentiment of horror; and it has even been said, that if this victim of the ferocity of their half savage brethren at Mendoza had been sent to this place, even his life would have been probably spared. 'Carrera, by his great personal resources, had proved the most dangerous enemy of the present state of things in these provinces, and had San Martin failed in Peru, and Carrera had survived that failure, he would have menaced the tranquillity of Chili: thus his death is a great event for the present rulers here, although the manner of it may be very revolting to more civilized breasts.'"

The conclusion of the year 1821, left little doubt of the ultimate fate of all the Spanish provinces. The deputies of Colombia to the Cortes in Spain that year insisted at once on independence, and would not assent to any engagement upon any other basis, while those of Mexico were authorized to forego an acknowledgment, and do not appear even to have aspired to it.\* We insert in this note a plan of con-

\* "ART. I. There shall be three sections of Cortes in America, one in the north and two in the south. The first shall be composed of

federation, proposed to the Cortes by the Mexican deputies themselves. But what credulity to expect to treat with

the deputies of all New Spain, including the internal provinces of Guatemala; the other two sections shall comprehend—the one New Granada and the provinces of Terra Firma; the other Peru, Buenos Ayres and Chili.

“ART. 2. These sections shall unite, at the time appointed by the constitution.

“ART 3. The capitals where these sections shall, for the present, unite, are the following. The section of New Spain in Mexico, that of New Granada and Terra Firma in Santa Fe, and that of Peru, Buenos Ayres and Chili in Lima.

“ART. 4. There shall be in each of these divisions a delegation to exercise, in the name of the King, the executive authority.

“ART. 5. These delegations shall each be composed of one person, named by the will of his Majesty, selected from amongst men of the most transcendent talents, without excluding the members of the royal family. This delegate shall be removable at the pleasure of his Majesty, and shall only be responsible for his conduct to his Majesty and the general Cortes.

“ART. 6. There shall be four departments of the interior,—of finance, of justice, of war and marine.

“ART. 7. There shall be three sections of the supreme tribunals of justice, composed of a president, eight ministers and an attorney general.

“ART. 8. There shall be three sections of the council of state, each composed of seven individuals, but the legislative sections may, at pleasure, reduce their number to five.

“ART. 9. The commerce between the peninsula and America, shall be considered as interior from one province of the monarchy to another; and, consequently, the Spaniards of both hemispheres shall enjoy in them the same advantages as their respective natives.

“ART. 10. They shall, likewise, reciprocally enjoy the same civil rights and equal eligibility to employments and public offices as their respective natives.

“ART. 11. New Spain and the other countries, comprehended in the territory of their legislative section, oblige themselves to deliver to the peninsula, the sum of two hundred millions of reals in the space of six years, which shall commence on the 1st of January 1823.

“ART. 12. New Spain and the other territories, comprehended in her legislative section, likewise bind themselves to contribute to the navy expenses of the peninsula with forty millions of reals annually.

Spain on this momentous subject ! Spain, of all governments most celebrated for delays, for never ending correspondences and for diplomatic lethargy ! This power, expected to yield to the impatience and eagerness of the aspiring states of the new world,—to renounce, in a cession of the Cortes, an allegiance she had held for three centuries ! The kingdom of the Indies abandoned in a single importation of deputies ! “ The Spaniards of both hemispheres,” says the King in his speech, “ ought to be persuaded there is nothing he desires so much as their liberty, founded in the integrity of the monarchy and in the observance of the constitution.”

The time had now arrived, when this government determined to recognise some of the new states in South America. This memorable disposition was communicated to Congress in a message, March 8th, 1822. From a report of the House of Representatives, made on the subject of this communication, we shall, before reciting the resolutions, extract one or two passages.

“ That the provinces of Buenos Ayres after having, from the year 1810, proceeded in their revolutionary movements without any obstacle from the government of Spain, formally declared their independence of that government in 1816. After various intestine commotions and external collisions, those provinces now enjoy domestic tranquillity and a good understanding with all their neighbours, and actually exercise, without opposition from within, or the fear of annoyance from without, all the attributes of sovereignty.

‘ The provinces of Venezuela and New Granada, after having separately declared their independence, sustained, for a period of

“ ART. 13. The rest of the countries of America comprised in the other sections shall contribute to the peninsula in the manner, that shall be hereafter fixed upon, and according to their circumstances.

“ ART. 14. New Spain takes upon herself the payment of all the public debt, contracted in her territory by order of her agents in her name and by her authority, the lands, revenues and other property of the state, of whatever nature, without prejudice to what has been agreed upon in the 11th article, shall be made over to her to serve as an hypothecation of what has been stipulated in said article.”

more than ten years, a desolating war against the armies of Spain, and having severally attained, by their triumph over those armies, the object for which they contended, united themselves on the 19th of December 1819, in one nation, under the title of 'The Republic of Colombia.'

"The Republic of Colombia has now a well organized government, instituted by the free will of its citizens, and exercises all the functions of sovereignty, fearless alike of internal and foreign enemies. The small remnant of the numerous armies, commissioned to preserve the supremacy of the parent state, is now blockaded in two fortresses, where it is innoxious, and where, deprived, as it is, of all hope of succour, it must soon surrender at discretion; when this event shall have occurred, there will not remain a vestige of foreign power in all that republic, containing between three and four millions of inhabitants.

"The province of Chili, since it declared its independence in the year 1818, has been in the constant and unmolested enjoyment of the sovereignty, which it then assumed.

"The province of Peru, situated like Chili beyond the Andes, and bordering on the Pacific Ocean, was, for a long time, deterred from making any effectual effort for independence by the presence of an imposing military force, which Spain had kept up in that country. It was not, therefore, until the 12th of June of the last year, that its capital, the city of Lima, capitulated to an army, chiefly composed of troops from Buenos Ayres and Chili, under the command of General San Martin. The greatest part of the royal troops, which escaped on that occasion, retreated to the mountains, but soon left them to return to the coast, there to join the royal garrison in the fortress of Callao. The surrender of that fortress soon after to the Americans, may be regarded as the termination of the war in that quarter.

"The revolution in Mexico has been, somewhat, different in its character and progress, from the revolutions in other Spanish American provinces, and its result, in respect to the organization of its internal government has, also, not been precisely the same. Independence, however, has been as emphatically declared and as practically established since the 24th of August last by the 'Mexican Empire,' as ever it has been by the republics of the South; and her geographical situation, her population and her resources,

eminently qualify her to maintain the independence she has thus declared and now actually enjoys."

"*Who is the rightful sovereign of a country, is not an enquiry permitted to foreign nations, to whom it is competent only to treat with the 'powers that be.'*"

"There is no difference of opinion on this point among the writers on public law: and no diversity with respect to it in the practice of civilized nations. It is not necessary here to cite authority for a doctrine familiar to all, who have paid the slightest attention to the subject, nor to go back for its practical illustration to the civil wars between the houses of York and Lancaster. Have we not, indeed, within the brief period of our own remembrance, beheld governments vary their forms and change their rulers, according to the prevailing power or passion of the moment, and doing so in virtue of the principle now in question, without materially and lastingly affecting their relations with other governments? Have we not seen the emperors and kings of yesterday receive on the thrones of exiled sovereigns, who claimed the right to reign there, the friendly embassies of other powers, with whom those exiled sovereigns had sought an asylum,—and have we not seen to-day those emperors and kings thus courted and recognised yesterday, rest of their sceptres, and, from a mere change of circumstances, not of right, treated as usurpers by their successors, who, in their turn, have been acknowledged and caressed by the same foreign powers?"

"'Even when civil war breaks the bonds of society and of government, or, at least, suspends their force and effect, it gives birth in the nation to two independent parties, who regard each other as enemies and acknowledge no common judge.' It is of necessity, therefore, that these two parties should be considered by foreign states as two distinct and independent nations. To consider or treat them otherwise would be to interfere in their domestic concerns, to deny them the right to manage their own affairs in their own way, and to violate the essential attributes of their respective sovereignty. For a nation to be entitled to respect in foreign states, to the enjoyment of these attributes, and to figure directly in the great political society, it is sufficient that it is really sovereign and independent, that it governs itself by its own authority and laws. The people of Spanish America do notoriously so



govern themselves, and the right of the United States to recognise the governments, which they have instituted, is incontestable. A doubt of the expediency of such a recognition can be suggested only by the apprehension, that it may injuriously affect our peaceful and friendly relations with the nations of the other hemisphere ?

“ No nation in Europe, excepting Spain herself, has, hitherto, opposed force to the independence of South America. Some of those nations have not only constantly maintained commercial and friendly intercourse with them in every stage of the revolution, but indirectly and efficiently, though not avowedly, aided them in the prosecution of their great object. To these the acknowledgment by the United States of the attainment of that object must be satisfactory.

“ To the other nations of Europe, who have regarded the events occurring in Spanish America, not only without interference, but with apparent indifference, such an acknowledgment ought not to be offensive.

“ The nations, who have thus, respectively, favoured or never opposed the Spanish American people during their active struggle for independence, cannot, it is believed, regard with dissatisfaction the formal recognition of that independence by a nation, which, while that struggle lasted, has religiously observed towards both the conflicting parties all the duties of neutrality. Your committee are, therefore, of opinion, that we have a right on this occasion confidently to expect, from what these nations have done or forbore to do, during the various fortunes of the civil war, which has terminated, that they will frankly approve the course of policy, which the United States may now think proper to adopt in relation to the successful party in that war. It surely cannot be reasonably apprehended, that nations, who have thus been the tranquil spectators, the apparent well wishers, if not the efficient supporters of this party, and who have not made the faintest attempt to arrest its progress, or to prevent its success, should be displeased with a third power, for merely recognising the governments, which, owing to that success, have thus been vitally permitted or impliedly approved in acquiring the undisputed and exclusive control of the countries in which they are established.”

“ Resolved, That the House of Representatives concur in the

opinion expressed by the President in his message of the 8th of March 1822, that the American provinces of Spain which have declared their independence and are in the enjoyment of it, ought to be recognised by the United States as independent nations.

"Resolved, That the committee of ways and means be instructed to report a bill, appropriating a sum, not exceeding one hundred thousand dollars, to enable the President to give due effect to such recognition."

On the 4th of May 1822, an act of Congress made an appropriation of 100,000 dollars "for such missions to the independent nations on the American continent as the President of the United States might deem proper." In pursuance of this authority, ministers plenipotentiary were successively appointed to Colombia (R. C. Anderson, Jun., of Kentucky, 1824), to Buenos Ayres (C. A. Rodney, of New Jersey, 1824), to Chili (H. Allen, of Vermont, 1824), to Mexico (Joel Poinsett, of South Carolina, 1826). In 1825 J. M. Forbes succeeded Mr. Rodney at Buenos Ayres as a chargé. We shall take this opportunity, also, to state that in 1824, Jose Manuel Zazoza was accredited a minister from Mexico, Jose Maria Salazar a minister plenipotentiary from Colombia, and in 1825, Antonio Jose Canas envoy and minister from Guatemala.

We are not so much struck with the length of time this revolution lasted, as with the little stability and firmness, with which it proceeded. Whether foreign nations find it for their interest to recognise a new state a lustre sooner or later, does not much signify. Old nations admit new members into the great family with jealousy. The recognition by this country was the first, but it was delayed, till not a shadow of hope for the restoration of Spanish dominion remained. The last strand had fairly parted, and it had fully ceased to be matter of doubt, whether injury was done to Spain. It is, also, evident that the success of the revolution was little retarded, or obstructed by the power of the mother country. If it did not sweep on with an easy, strong and rapid course, it is to be principally, perhaps solely, attributed to domestic and internal difficulties and obstacles.

The greatest and most obvious is the complete unfitness of the people, in the outset, for a free government.

Before the revolution, every office of the slightest value or influence, whether military, civil or ecclesiastic, was in the hands of Spaniards, naturally devoted to the mother country, and assuming and exercising great superiority over, even, the Creoles. It has been calculated, that there were, at least, three hundred thousand natives of Old Spain, distributed in offices throughout the colonies;—of themselves a great army;—an appalling source of influence and control!—a formidable bulwark and barrier for the metropole! The ecclesiastics, alone, would seem to have been sufficient to have prevented alterations in the form of government, but though their influence over the laity is undoubted, we think it quite apparent, from the proceedings in France, Italy and Spain the last thirty-five years, that there has been, in the body itself, a decided radical spirit, produced originally by the difference of wealth, and modes of life of the various orders and degrees of the clergy of that church, and then heightened by the constant, internal difficulties and dissensions, that have notoriously taken place. With the exception of the Jesuits, it is far, indeed, from being true, that the different gradations of the Catholic clergy, whether religious or secular (we use the first word in its technical sense, for the want of an appropriate one in English) have submitted to their ecclesiastical government with entire cheerfulness and satisfaction.

We have said that the Spaniards held all the offices in South America. But it is still more remarkable, they were the only merchants established in the colonies, so that, in fact, all the active capital of the country, at the commencement of the revolution, was in the hands of natives of the parent state,—another cause, that may be mentioned to account for the slow and insecure progress of the revolution. We are well aware, that a strong, popular excitement razes to the ground and sweeps off, at a single plunge, such frail obstacles, upon which we are apt to rely with so much confidence and emphasis in all our reasonings and speculations.

But a circumstance, certainly fated to a universal, overpowering sympathy, unfortunately was deep seated and entered radically into the composition of all society in the colonies. We speak now of the different races of men, inhabiting South America. Humboldt gives a general enumeration of them in Mexico, which, he observes, applies with accuracy to all the provinces.

1st Race—Individuals born in Europe called Gachupines.

2. Creoles—European descended, white born in the colonies.

3. Mestizos, descended from the whites and Indians.

4. Mulattoes, descended from whites and negroes.

5. Zambos, descended from whites and Indians.

6. Indians—the Copper Race.

7. African negroes.

It is true, there were, originally, but few slaves in Mexico, and inconveniences, from mixt bloods on that side, will not be felt to a great extent in that portion of the country, but in Peru and Caraccas, African negroes and every degree of mixt blood, that can issue from them, abounded. We, also, readily admit that prejudices, on this score, extremely diminish from habit. An inhabitant of the United States, where there are but two races of men, (and one in a condition of slavery, so that a perfect and most marked contrast is constantly exhibited) does not easily realize with what facility the different casts slide together. But we never can believe, that this union for civil and political purposes can be permanent or, in the least, to be depended upon. "In South America," says Humboldt, "a skin, more or less white, determines the rank a man shall occupy in society. A white man, that rides on horseback without shoes or stockings, considers, nevertheless, that he belongs to the noblesse of the country, and we often hear an individual of the lowest order of the people, when disputing with a titled Seigneur, say to him, 'is it possible that you consider yourself whiter than I am?'" Hitherto, they have lived peaceably and quietly together, because one race of men compelled all other races to submit. But upon what do the permanent sympathies of

mankind depend? Surely on character and general similarity of appearance and tastes. And yet all writers admit, that in the Spanish provinces there exist four grand divisions of men; (without including subdivisions) distinct in character, appearance and modes of life;—men, whose skulls, according to craniology, present totally different developments, with a different facial angle,—proceeding originally, at least, from three continents,—Europe, Africa and America. The classes are the European—African—Creole—and Aborigines or Copper men.—These grand divisions, with the numerous puzzling subdivisions under them, now enter all over Spanish America into the composition of society, now present themselves for the offices of government with equal claims under the law, but with every variety of pretension under nature. We may overrate the weight of this consideration, but it appears to us, that, thus far, it has infinitely and fatally interfered with the auspicious course of the revolution, and will long remain an obstacle, extremely formidable.

A difficulty of a mischievous and troublesome, though probably not of a permanent description, has arisen, not so much from the establishment, as from the jealousies and contentions for authority, among noble and powerful families. Nobility originally existed in every part of South America, and at the breaking out of the war, many families possessed immense estates and influence. The first glimmerings of the revolution may, perhaps, in some cases be traced to the very power of these houses, but their object being of a limited or personal kind, their endeavours have been accompanied with any but good results. The quarrels between the Carreras and Larraíns in Chili have greatly retarded the progress of the people towards national freedom, and infused a disrelish to the cause. There is not only a wide difference between independence and liberty, but an aspiring colonist may be quite honest and zealous in his endeavours to break the chains of the mother country, and yet be fully reconciled to the delight and distinction of riveting them himself.

On the first day of January 1823, the situation of the new Republics was, in general terms, as follows;—On the continent

of North America, Mexico and Guatimala, not differing in boundaries from the ancient Viceroyalty and Captain Generalship of the same name. The latter is now called the Federation of the Centre of America. Mexico, by an agreement with Donohu, was declared independent by Spain in 1821. In South America, Colombia forms the head of the continent. The union of Venezuela and Granada took place in December 1819. This district is properly the seat and cradle of the revolution, and from its situation and other circumstances is, perhaps, the most remarkable country in the world. The following is a brief, but we believe, by no means poetical description of it from the pen of one of its ministers in this country.

“With respect to the ability and capacity of Colombia to maintain its independence, no well founded doubt can arise upon that point, if we consider on one hand the great population of the republic, which exceeds 3,600,000 souls, the extent of its territory, its natural and artificial resources, and its situation; and, on the other, the great military talent displayed by its generals and officers, and the discipline and valour manifested by its troops on all occasions, but particularly in the celebrated battles of Boyaca and Carabobo, in the capture of St. Martha, defended by seventeen exterior batteries, all taken by assault, and the reduction of the fortresses of Carthagena and Cumana.

“Some idea may be also formed of the degree of splendour, power and future prosperity, of the new republic, by considering it placed in the centre of the universe, with an extent of coast of twelve hundred miles on the Atlantic, from the Orinoco to the isthmus of Darien, and of seven hundred miles on the Pacific ocean, from Panama to Babia de Tumbez; and exempt, at all seasons, from any of those dreadful hurricanes, which cause such disasters in the Antilles, in the Gulf of Mexico, and in other places.

“The great canals which are formed by the river Orinoco and its tributary streams, the Sulia, with the lake of Maracaybo, the Magdalena, the Cauca and the Atrato, which all empty into the Atlantic, render Colombia the most favoured part of the universe for interior navigation; and, by a union of all climates, unites, also, in great abundance, the productions of the three kingdoms of nature.

"Agriculture is further advanced in Colombia than in any other part of continental America, formerly Spanish, and its products of exportation, which consist chiefly of cocoa, coffee, indigo, tobacco of Barinas, and some cotton, are of a quality superior to those of other countries, except the cotton. With respect to the precious metals, Colombia is inferior neither to Mexico nor Peru, with the advantage that their discovery is more easy and less expensive. She also unites, by prolonged canals, two oceans which nature had separated; and by her proximity to the United States and to Europe, appears to have been destined, by the Author of Nature, as the centre and the empire of the human family."

Then next in course, following the latitude to the southward, we meet with Peru, laying, in the shape of a square, between the Pacific, Colombia, the Kingdom of Brazil and the United Provinces. They, with some additions, are formed out of the ancient Viceroyalty of La Plata, and, like Colombia, are washed by two oceans. These provinces are enclosed on the north by Brazil, to the south they run as far as the confines of Patagonia, and are separated, on the west, from Chili by the Cordilleras of the Andes. Chili, the last republic we shall have occasion to mention, is still represented by a narrow border between the Andes and the Pacific. We presume, it is unnecessary to add that we do not profess to give the exact boundaries of the new states, a degree of accuracy to which we have no means of attaining in consequence of original as well as recent changes. The reader will, however, perceive, that leaving out of view the wilds and deserts of Patagonia, the South American continent is now divided between the New Republics and the Kingdom of Brazil.

It was not to be expected, that Spain would witness the loss of her colonies with entire equanimity of temper, or endure in silence the recognition of the new states. That government cannot be reproached with ever suffering an opportunity to pass by of entering into discussions,—recording remonstrances, or renewing claims and pretensions with a spirit and perseverance, of which, in our diplomacy, there is no other example. She has lost kingdoms and continents, almost without fighting a battle; but it cannot be said these

calamities have befallen her without volumes of representations and complaints. The last ebb of her glory seems to pour itself out in the zeal and resolution, with which her diplomatic agents have defended her rights abroad. The United States did not escape some portion of indignant remonstrance on the occasion of the acknowledgment of the provinces of Ultramar. But the matter was soon dropped; —Castille and Arragon had a vulture, fastened upon their own sides, and while foreign troops were defiling along the passes of the Pyrenees (by which they had formerly entered for the purpose then of overthrowing the only remaining Bourbon on the continent); were conducting a military journey through Spain to end in the well acted melo drama of the Trocadero, the kingdom of the Indies in this quarter was abandoned to its fate. A remonstrance, though urged at first with vehemence by the Spanish minister at Washington, Don Joaquin de Anduaga, was but once renewed, and in a faint tone.

"In the National Intelligencer" the envoy writes March 9th, 1822, to the Secretary of State—"of this day I have seen the message, sent by the President to the House of Representatives, in which he proposes the recognition by the United States of the insurgent governments of Spanish America. How great my surprise was, may be easily judged by any one, acquainted with the conduct of Spain towards this Republic, and who knows the immense sacrifices, which she has made to preserve her friendship. In fact, who could think that in return for the cession of her most important provinces in this hemisphere; for the forgetting of the plunder of her commerce by American citizens; for the privileges granted to this navy, and for as great proofs of friendship as one nation can give to another, this executive would propose, that the insurrection of the ultra marine possessions of Spain should be recognised. And, moreover, will not his astonishment be augmented to see that this power is desirous to give the destructive example of sanctioning the rebellion of provinces, which have received no offence from the mother country, to those, to whom she has granted a participation of a free constitution, and to whom she has extended all the rights and prerogatives of Spanish citizens? In vain will a parallel be attempted to be drawn between the emancipation of this re-



public and that which the Spanish rebels attempt, and history is sufficient to prove, that if a harassed and persecuted province has a right to break its chains, others, loaded with benefits, elevated to the high rank of freemen, ought only to bless and embrace more closely the protecting country, which has bestowed such favours on them.—Although I could enlarge upon this disagreeable subject, I think it useless to do so, because the sentiments, which the message ought to excite in the breast of every Spaniard, can be no secret to you. Those, which the king of Spain will experience at receiving a notification, so unexpected, will be, doubtless, very disagreeable and at the same time, that I hasten to communicate it to his Majesty I think it my duty to protest, *as I do solemnly protest against the recognition of the governments of the insurgent Spanish Provinces of America by the United States: declaring that it can in no way, now, or at any time, lessen or invalidate, in the least, the right of Spain to the said provinces, or to employ whatever means may be in her power to reunite them to the rest of her dominions.*”

A reply to this representation was speedily made in a tone, equally mild and firm.

“Your letter of the 9th March was immediately, after I had the honour of receiving it, laid before the President of the United States, by whom it has been deliberately considered, and by whose direction I am, in replying to it, to assure you of the earnestness and sincerity, with which this government desires to entertain and to cultivate the most friendly relations with that of Spain.

“This disposition has been manifested, not only by the uniform course of the United States in their direct political and commercial intercourse with Spain, but by the friendly interest, which they have felt in the welfare of the Spanish nation, and by the cordial sympathy, with which they have witnessed their spirit and energy, exerted in maintaining their independence of all foreign control and their right of self-government.

“In every question, relating to the independence of a nation, two principles are involved, one of *right* and the other of *fact*, the former, exclusively depending upon the determination of the nation itself, and the latter, resulting from the successful execution of that determination. This right has been recently exercised, as well by the Spanish nation in Europe, as by several of those coun-

tries in the American hemisphere, which had for two or three centuries been connected as colonies with Spain. In the conflicts that have taken place, we have carefully abstained from taking any part, and have observed, whenever it was a contest by arms, the most impartial neutrality. But the civil war, in which Spain was for some years involved with the inhabitants of the colonies of America, has, in substance, ceased to exist. Treaties, equivalent to an acknowledgment of independence, have been concluded by the commanders and viceroys of Spain herself, with the Republic of Colombia, with Mexico and with Peru: while in the Province of La Plata and in Chili, no Spanish force, for several years, existed, to dispute the independence, which the inhabitants of those countries had declared.

"Under these circumstances, the government of the United States, far from consulting the dictates of a policy, questionable in its morality, yielded to an obligation of duty, of the highest order by recognising as independent states, nations, which after deliberately asserting their rights to that character, have maintained and established it against all the resistance, which had been or could be brought to oppose it. This recognition is neither intended to invalidate any right of Spain, nor to affect the employment of any means, which she may yet be disposed or enabled to use, with the view of reuniting those provinces to the rest of her dominions. It is the mere acknowledgment of existing facts with the view to the regular establishment, with the nations newly formed, of those relations, political and commercial, which it is the moral obligation of civilized and christian nations to entertain reciprocally with one another."

The President's message is supposed, also, to have given rise to a manifest, published by Spain in June 1822, and addressed to the courts in Europe. We have never seen the original, but shall make a few extracts from a translation, principally for the purpose of showing that Spain had, in reality, abandoned all hopes of reclaiming, by force of arms, the colonies, and sought, as the last remedy, the aid and countenance of the legitimate thrones of Europe. It is well known, the subject was discussed by the sovereigns at the congress of Aix la Chapelle, and their interference was only prevented by a declaration of England, that she should regard,

as an act of hostility, any warlike movements of the holy alliance in behalf of Spain.

"His Catholic Majesty, in calling the attention of his august allies towards the dissident Spanish Provinces of America, judges it not only useless, but unseasonable to examine the causes, which produced in those countries, a desire to separate from the mother country; it is sufficient for his Catholic Majesty to have the consolation that it was not the abuse of power, nor the weight of oppression which originated so serious an event, and that only extraordinary circumstances and the terrible crisis, in which Spain saw herself compromised to free her throne and dignity from the imminent risk of a foreign usurpation, could occasion a disunion so fatal between the members of one and the same family.

"His Catholic Majesty does not present himself to those provinces, as a resentful monarch before his misled subjects, but as a pacific mediator in the discords of his children. He casts a veil over the past, in order to see the present without any kind of prejudice, and contemplates the actual situation under all the relations, which unite it with the future.

"His Catholic Majesty extends his views to a more extensive horizon and considers this great question as an European question. A long time passed, before the prodigious effects of the discovery of the new world were perceived in this continent; nobody could foresee them, much less calculate them. The same his Majesty judges may be said of the great events, which are agitating America, and whose effects must influence, necessarily and in a very rapid manner, the lot of Europe. It is not possible to determine the degrees of this influence, nor the alterations it must produce in the reciprocal relations of the one and the other hemisphere; but his Catholic Majesty hesitates not to affirm, that the transaction, which fixes the lot of the Spanish provinces of America, and puts an end to the blind and impetuous course of its revolution, will be one of the benefits, the most memorable for the civilized world.

"There will, perhaps, be superficial spirits, who will see a solid and established government and a constituted nation in each province, which may have declared its independence, and who, without attending to obstacles of any kind, nor to the principles of public right, nor to the best known maxims of the law of nations, will believe, that the mere fact of the separation of a province

from the state, of which it formed a part, renders its existence legitimate.

"But the governments fortunately know by a sad experience the effects, which are produced by a similar overthrow of principle, they foresee the consequence of its propagation, not less fatal to legitimate governments, than to the integrity of nations, and are well aware of the consequences to Europe of sanctioning in America, as some pretend, the undefined right of insurrection.

"Thus it is, that his Catholic Majesty believes not only interested in this question those nations who possess colonies and establishments in Ultramar, to which the same theory could be applied, but that he, also, considers this business as intimately connected with those conservatory principles, that offer securities to all governments and guaranties to society."

In October 1824 a convention of peace, amity, navigation and commerce was concluded at Bogota by Mr. Anderson with the republic of Colombia.\* This treaty, the first

\* *"In the name of God, Author and Legislator of the Universe.*

"The United States of America, and the Republic of Colombia; desiring to make lasting and firm the friendship and good understanding which happily prevails between both nations, have resolved to fix, in a manner clear, distinct and positive, the rules which shall in future be religiously observed between the one and the other, by means of a treaty or general convention of peace and friendship, commerce and navigation.

"For this most desirable object, the President of the United States of America has conferred full powers on Richard Clough Anderson, junior, a citizen of the said States, and their minister plenipotentiary to the said republic, and the Vice-President of the Republic of Colombia, charged with executive power, on Pedro Gual, secretary of state and of foreign relations, who, after having exchanged their said full powers in due and proper form, have agreed to the following articles:

"ART. 1. There shall be a perfect, firm and inviolable peace and sincere friendship between the United States of America and the Republic of Colombia, in all the extent of their possessions and territories, and between their people and citizens respectively, without distinction of persons or places.

"ART. 2. The United States of America and the Republic of Colombia, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly

made with a South American state, was ratified the May following. Its provisions are generally of the most liberal

with all, engage mutually not to grant any particular favour to other nations in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional.

"ART. 3. Citizens of the United States at liberty to frequent all the coasts and countries of the Republic of Colombia, to reside and trade there, &c. Citizens of the Republic of Colombia may frequent all the coasts and countries of the United States for the purpose of trade, &c.

"ART. 4. Merchants, commanders of ships, and other citizens of both countries, &c. to manage their own business; to be treated as citizens of the most favoured nation.

"ART. 5. The citizens of neither of the contracting parties shall be liable to any embargo, nor be detained with their vessels, cargoes, merchandises, or effects, for any military expedition, nor for any public or private purpose, whatever, without allowing to those interested a sufficient indemnification.

"ART. 6. Whenever the citizens of either party seek refuge, in the dominions, &c. of the other, they are to be treated as friends, &c.

"ART. 7. All ships, &c. belonging to the citizens of either party captured by pirates, and found within the dominions of either, to be delivered up to the owners.

"ART. 8. Assistance and protection to be rendered in case of wrecks, &c. within the dominions of each other.

"ART. 9. The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or otherwise, and their representatives, being citizens of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato*, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country, wherein the said goods are, shall be subject to pay in like cases: And if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance, on account of their character of aliens, there shall be granted to them the term of three years to dispose of the same, as they may think proper, and to withdraw the proceeds without molestation, and exempt from all rights of detraction, on the part of the government of the respective states.

"ART. 10. Complete protection in persons and property in the territories of both nations, legal redress, &c.

"ART.

kind ;—the principle of free ships, free goods was introduced, but as the reader will observe (articles 12, 13) sev-

"ART. 11. It is likewise agreed that the most perfect and entire security of conscience may be enjoyed by the citizens of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties, who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent or suitable places, and shall be protected from violation or disturbance.

"ART. 12. It shall be lawful for the citizens of the United States of America and of the Republic of Colombia\* to sail with their ships, with all manner of liberty and security, no distinction being made, who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with the ships and merchandises beforementioned, and to trade with the same liberty and security from the places, ports and havens, of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy, beforementioned, to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power or under several. And it is hereby stipulated, that free ships shall also give freedom to goods, and that every thing shall be deemed to be free and exempt, which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either, they are not to be taken out of that free ship, unless they are officers or soldiers, and in the actual service of the enemies: Provided, however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only who recognise the principle; but if either of the two contracting parties should be at war with a third, and the other neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle, and not of others.

"ART.

eral of the provisions respecting enemies goods in neutral vessels are rather of an obscure, complicated character.

**"ART. 13.** It is likewise agreed, that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemy's vessels shall be held and considered as enemy's property, and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree, that two months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandises of the neutral, embarked in such enemy's ship, shall be free.

**"ART. 14.** This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband, and under this name of contraband, or prohibited goods, shall be comprehended—

"1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds and granades, bombs, powder, matches, balls, and all other things belonging to the use of these arms;

"2dly. Bucklers, helmets, breast plates, coats of mail, infantry belts and clothes made up in the form and for a military use;

"3dly. Cavalry belts, and horses with their furniture;

"4thly. And generally all kinds of arms and instruments of iron, steel, brass and copper, or of any other materials manufactured, prepared and formed, expressly to make war by sea or land.

**"ART. 15.** All other merchandises and things not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blocked up; and to avoid all doubt in this particular, it is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of the neutral.

**"ART. 16.** The articles of contraband, before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the

The effect of such stipulations is, probably, to lead to disputes, or, at the least, to a variety of versions and interpre-

cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas on account of having on board articles of contraband, whenever the master, captain, or supercargo of said vessel will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great, and of so large a bulk, that they cannot be received on board the capturing ship without great inconvenience; but in this and in all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port, for trial and judgment according to law.

"ART. 17. And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed, that every vessel so circumstanced, may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo, if not contraband, be confiscated, unless, after warning of such blockade, or investment from the commanding officer of the blockading forces, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either, that may have entered into such port before the same was actually besieged, blockaded or invested, by the other, be restrained from quitting such place with her cargo, nor if found therein after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

"ART. 18. In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed mutually, that whenever a vessel of war, public or private, shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, and may send its boat with two or three men only in order to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of the said private armed vessels shall, before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel, for the purpose of exhibiting her papers, or for any other purpose whatever.

"ART.



tations, by which, in the end, the sound, wholesome parts of the treaty may be impeached. The greatest difficulty in re-

"ART. 19. In case of war, sea letters, certificates of cargo, &c. to be furnished, expressing to whom the property belongs.

"ART. 20. Visiting regulations to apply only to vessels without convoy.

"ART. 21. Established courts only to try prize causes. Motives of condemnation to be stated.

"ART. 22. Whenever one of the contracting parties shall be engaged in war with another state, no citizen of the other contracting party shall accept a commission, or letter of marque, for the purpose of assisting or cooperating hostilely, with the said enemy, against the said parties so at war, under the pain of being treated as a pirate.

"ART. 23. In case of war, six months allowed to those on the coast, and twelve for those in the interior to remove effects, &c.

"ART. 24. Neither the debts due from individuals of the one nation to the individuals of the other, nor shares, nor moneys, which they may have in public funds, nor in public nor private banks, shall ever, in any event of war, or of national difference, be sequestered or confiscated.

"ART. 25. Official intercourse in relation to public ministers, &c. to be on a reciprocal footing.

"ART. 26. Each party permitted to have consuls in each other's ports.

"ART. 27. Commissions to be exhibited before exequatur is obtained.

"ART. 28. Consuls exempt from public service—their archives inviolate.

"ART. 29. The said consuls shall have power to require the assistance of the authorities of the country for the arrest, detention and custody of deserters from the public and private vessels of their country, and for that purpose they shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the registers of the vessel's or ship's roll, or other public documents, that those men were part of the said crews; and on this demand, so proved, (saving, however, where the contrary is proved) the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of the said consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be sent to the ships to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause. "ART.

gard to treaties, even of the simplest form, has always consisted in the execution of them. The contrabands are very limited, being strictly confined to instruments of war or war-like purposes;—blockades and mode of search (unless accompanied with convoy) were defined, as has been done in other conventions, concluded by this country. The commercial articles do not recommend themselves particularly to notice;—they all rest on the ancient basis of the most favoured nation, the United States reserving to themselves the right of securing any commercial advantages by offering equivalents. In examining the articles of the first treaty concluded between two free states of the American hemisphere, the friend of liberal stipulations will probably expect to find a complete development of the favourite system of

“ART. 30. Consular convention to be formed.

“ART. 31. The following points agreed to:

“1st. The present Treaty shall remain in full force and virtue for the term of twelve years, to be counted from the day of the exchange of the ratifications, in all the parts relating to commerce and navigation; and in all those parts which relate to peace and friendship, it shall be permanently and perpetually binding on both powers.

“2dly. If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizen shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

“3dly. If, (what indeed, cannot be expected) unfortunately, any of the articles contained in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated, that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended, shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

“4thly. Nothing in this treaty contained shall, however, be construed, or operate contrary to former and existing public Treaties with other sovereigns or states.”

this country. But, after all, every provision of a treaty must be matter of construction and what new principle remains to be introduced, that is not to be found in the first convention adopted by the United States—the treaty of 1783 with Sweden and of 1785 with Prussia.—The whole system of this republic is, in reality, reduced to three or four general propositions,—the character of goods in neutral vessels,—an exact definition of blockade,—right of search and of contrabands, and with those countries, that have colonial possessions, regulations respecting colonial trade in time of war. In the beginning of our history, some regulations respecting privateers, prisoners of war, artisans, fishermen, &c. were inserted, releasing, in general, private property and all noncombatants from the desolations of war. But we have never seen these propositions renewed.\*

\* In December 1825 a general convention of peace, amity, commerce and navigation was negotiated at Washington by Henry Clay, secretary of state and Antonio Jose Cañas, envoy extraordinary and minister plenipotentiary from the federation of the Centre of America. This convention consists of thirty-three articles and, with the exception of the provisions, relating to commerce, is a literal copy of the treaty, made with Colombia, we have just recited. By that instrument the commerce of the two parties was placed on the footing of the most favoured nation; by this, on that of full and complete reciprocity. We shall extract only the articles, relating to this subject, referring for the others to the treaty with Colombia. The reader will observe, that the reciprocity is more perfect than in the commercial conventions with the European states, because it extends to all productions, whether foreign or domestic, whether exported from or imported into the places and territories of the respective parties or of all other places and territories.

“ART. 3. The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there, in all kinds of produce, manufactures and merchandise; and they shall enjoy all the rights, privileges and exemptions, in navigation and commerce, which native citizens do or shall enjoy, submitting themselves to the laws, decrees and usages, there established, to which native citizens are subjected.

In 1826 an alteration was made in the commercial part of this treaty, and the condition of reciprocity, already exten-

But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws.

"ART. 4. They likewise agree, that whatever kind of produce, manufacture or merchandise of any foreign country, can be, from time to time, lawfully imported into the United States, in their own vessels, may be also imported in vessels of the Federation of the Centre of America; and that no higher or other duties, upon the tonnage of the vessel, or her cargo, shall be levied and collected, whether the importation be made in vessels of the one country, or of the other. And, in like manner, that whatever kind of produce, manufactures or merchandise, of any foreign country, can be, from time to time, lawfully imported into the Central Republic, in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties, upon the tonnage of the vessel, or her cargo, shall be levied or collected, whether the importations be made in vessels of the one country, or of the other. And they further agree, that whatever may be lawfully exported, or reexported, from the one country, in its own vessels, to any foreign country, may, in like manner, be exported, or reexported, in the vessels of the other country. And the same bounties, duties and drawbacks, shall be allowed and collected, whether such exportation, or reexportation, be made in vessels of the United States, or of the Central Republic.

"ART. 5. No higher or other duties shall be imposed on the importation into the United States of any articles, the produce or manufactures of the Federation of the Centre of America, and no higher or other duties shall be imposed on the importation into the Federation of the Centre of America, of any articles, the produce or manufactures of the United States, than are or shall be, payable on the like articles, being the produce or manufactures of any other foreign country; nor shall any higher or other duties, or charges, be imposed in either of the two countries, on the exportation of any articles to the United States, or to the Federation of the Centre of America, respectively, than such as are payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufactures of the United States, or of the Federation of the Centre of America, to or from the territories of the United States, or to or from the territories of the Federation of the Centre of America, which shall not equally extend to all other nations."

sively introduced by this country in its transactions with the European states, was adopted by the republic of Colombia. In this particular instance, however, the United States were anticipated by Great Britain, that power having embraced (in a convention of friendship, commerce and navigation of April 1825) the following principles. 1. The equalizing tonnage and other port duties on the vessels of the two nations. 2. The equalizing the duties on the importation of goods, whether in the vessels of the one or the other country, provided those goods are of the produce or manufacture of the country, from which the importation is made. 3. Duty and bounty on exportation made equal whether the exportation takes place in British or Colombian vessels.

The American minister at Bogota was directed by the government, as soon as the stipulations of the British convention were known to claim under the second article of the treaty of October 1824, a similar concession in regard to American navigation and commerce. Colombia very promptly acceded to the proposition; but the law of January 7, 1824, authorizing the President to declare duties of tonnage and impost, suspended and discontinued only on certain conditions, the stipulation in favour of Great Britain was greater than could be met by that act. - The constitution, in forbidding Congress to impose, does not restrain that body from granting bounties on exports. The extent of the concession from Colombia exceeded nominally that of the United States; but as no bounties existed in this country, the principle of perfect reciprocity was, in substance, maintained. No notice appears to have been taken of this circumstance, and, if it should so happen, that a change, hereafter, should take place in the commercial arrangements of this country, we cannot doubt, but that the utmost loyalty and good faith will be manifested towards all nations. It may well be asked, why Colombia granted a reciprocity of tonnage and importation duties to the two greatest commercial powers in the world. That republic, it is true, is the most commercial state of South America, but upon what terms of equality does she enter into trade with the United States and Great

Britain? Perhaps it will be said in answer, that the commerce of that portion of South America is hardly yet matured or confirmed. For centuries it has been principally carried on by contraband, and considering the facilities offered by the extent of the coast, singularly fashioned into bays and most convenient inlets and recesses for concealment and landing, the course, also, of the Orinoco and the vicinity of English and Dutch settlements and possessions, much time and vigorous, persevering measures will be required to suppress it.

The recognition of the South American States appears, in itself, a measure of the gravest importance; but in reality, the country encountered no risk in undertaking it. As matter of historical record it is worthy of especial notice,—it forms, what, in the usual phrase, is called an æra;—the first nation, whose independence, this people, independent themselves only half a century, were called to acknowledge. There was, however, a proposition connected directly with this subject, not inferior in moment to any single act of the government, with the exception of the celebrated guaranty of the French West India possessions in the treaty of 1778; —We refer to the Congress of Panama, a project of magnificent auspices, but which has passed into the grave, or, at least, into oblivion, in a manner as silent as unaccountable. This Congress, proposed originally to be convened on a spot, that has justly attracted extraordinary attention, for there the great oceans of the two hemispheres approach each other within a few miles, was suggested as early as 1819, during the residence of the first American commissioners in South America. It was an obvious and natural proposal for the six or seven new states formed on that continent, engaged in a war against the same enemy for the attainment of the same object, entirely independent of each other, yet issuing from a common stock. Some alarm, also, was excited at the movements of the Holy Alliance of European sovereigns, of which Spain, herself, was a member. The scheme appears to have been first formally mentioned to this government in the spring of 1824, for the purpose of ascertaining,

whether a proposition to send deputies would be favourably received. But in the autumn of 1825, it was renewed with more ceremony, and some tolerable degree of consistency and uniformity were given to the details by the South American ministers at Washington, though, in every stage of its progress, this Congress (so far, at least, as the United States were concerned) has been attended with the great disadvantage of not being recommended by any precise objects, or set of subjects, well sketched and defined for discussion or deliberation. But in these particulars we shall leave the reader to judge for himself, first presenting him with an extract from a letter of November 1825 of Mr. Salazar, the Colombian minister.

"The undersigned has, also, been instructed to suggest some subjects, that will form useful matter of discussion in the Congress. These subjects constitute two classes. 1. Matters peculiarly and conclusively concerning the belligerents. 2. Matters between the belligerents and neutrals.

"As the United States will not take part in the discussion of subjects of the first description, we will confine ourselves to the latter.

"At Panama the best and most opportune occasion is offered to the United States to fix some principles of international law, the unsettled state of which has caused much evil to humanity. It belongs to each of the concurring parties to propose their views, but the voice of the United States will be heard with the respect and deference, which its early labours, in a work of such importance, will merit.

"The manner in which all colonization of European powers on the American continent shall be resisted, and their interference in the present contest between Spain and her former colonies prevented, are other points of great interest. Were it proper an eventual alliance in case these events should occur, which is within the range of possibilities, and the treaty, (of which no use should be made until the *casus fœderis* should happen) to remain secret, or, if this should seem premature, a convention so anticipated, would afford different means to secure the same end, of preventing foreign influence. This is a matter of immediate utility to the

American states that are at war with Spain, and is in accordance with the repeated declarations and protests of the cabinet at Washington. The conferences, held on this subject, being confidential, would increase mutual friendship and promote the respective interests of the parties.

"The consideration of the means to be adopted for the entire abolition of the African slave trade is a subject, sacred to humanity and interesting to the policy of the American states."

Mr. Obregon, the Mexican minister, in a letter of November 3d, repeats the same intimation :

"The government of the subscriber never supposed or desired that the United States of America would take part in the Congress, about to be held, in other matters than those, which from their nature and importance the late administration pointed out and characterised, as being of general interest to the continent, for which reason, one of the subjects, which will occupy the attention of the Congress, will be the resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain.

"The government of the undersigned apprehends, that as the powers of America are of accord as to resistance, it behoves them to discuss the means of giving to that resistance all possible force, that the evil may be met, if it cannot be avoided, and the only means of accomplishing this object is by a previous concert as to the mode, in which each of them shall lend its cooperation, for, otherwise, resistance would operate but partially, and in a manner much less certain and effective.

"The opposition to colonization in America by the European powers will be another of the questions, which may be discussed, and which is in like predicament with the foregoing.

"After these two principal subjects, the representatives of the United States of America may be occupied upon others, to which the existence of the new states may give rise, and which it is not easy to point out or enumerate : for which the government of the United States of Mexico will give instructions and ample powers to its commissioners, and it trusts, that those from the other powers may bear the same.

"To which end and in compliance with the tenor of the conver-



sations held by the honourable Secretary of State, the underwritten minister plenipotentiary invites this government to send representatives to the Congress of Panama with authorities, as aforesaid, and with express instructions in their credentials upon the two principal questions, in which step he is, likewise, joined by the minister of Colombia and with which he trusts he has fulfilled all that was stipulated to this end."

The letter of Mr. Canas, envoy from the Federation of Central America, is more general :

"The government of Central America, which I have the honour to represent, as early as the year 1821, was sensible of the importance to the independent nations of this continent of a general Congress of their representatives at some central point, which might consider upon and adopt the best plan for defending the states of the new world from foreign aggression, and by treaties of alliance, commerce and friendship, raise them to that elevation of wealth and power, which from their resources they may attain. It also acknowledged that as Europe had formed a *continental system*, and held a Congress, whenever questions, affecting its interests, were to be discussed, America should form a system for itself and assemble by its representatives in Cortes, whenever circumstances of necessity and great importance should demand it."

"I am anxious, therefore, to know if this Republic, which has ever shown itself the generous friend of the new American states, is disposed to send its envoys to the general Congress, the object of which is to preserve and confirm the absolute independence of these Republics, and to promote the general good, and *which will not require that the representatives of the United States should in the least compromise their present neutrality, harmony and good intelligence with other nations.*"

These are the general subjects of deliberation, as mentioned in the letters of the Mexican and South American envoys. In the outset of the exposition, we aim at nothing more than to connect, by an occasional sentence, the various paragraphs, which, for the benefit of the reader, (in order that he may have the facts put in an authentic form into his hands) we have recited from different public documents.

Between the years 1822 and 1825 the Republic of Co-

Colombia formed treaties of alliance, defensive and offensive, with the governments of Peru, Chili, the Federation of Central America and the Mexican states. The terms of the alliance and the object of the Congress of Panama are stated in the following articles :

“ The Republic of Colombia and the State of Chili are united, bound and *confederated, in peace and war*, to maintain by their influence and forces by sea and land—as far as circumstances permit—their independence of the Spanish nation and of any other foreign domination whatsoever”——“ these two states ‘contract a league of close alliance for the common defence—for the security of their independence and liberty, for their reciprocal and general good and for their internal tranquillity, obliging themselves to *succour each other*, and to repel, in common, every attack or invasion, which may, in any manner, threaten their political existence.’

——“ As soon as this great and important object has been attained, a general assembly of American states shall be convened, (at Panama, as subsequently stated) composed of their plenipotentiaries, with the charge of cementing, in the most solid and stable manner, the intimate relations, which ought to exist between all and every one of them, and which may serve as a council in the great conflict, as a rallying point in the common dangers, as a faithful interpreter of the public treaties, when difficulties occur, and as an umpire and conciliator in their disputes and difficulties.”

These several sets of extracts will, we imagine, leave no doubt of the intention of the South American states in proposing this meeting. The formal invitation, already quoted, given by the ministers of the new Republics, was accepted in the autumn of the same year, as will appear by an extract of a letter, dated Nov. 30, 1825, of the Secretary of State :

“ When, at your instance, during the last spring I had the honour of receiving you at the department of state, and conferring with you verbally, in regard to the proposed Congress, and to the friendly wish entertained by your government, that ours should be represented at it, I stated to you, by the direction of the President, that it appeared to him necessary, before the assembling of such a Congress, to settle between the different powers to be represent-

ed, several preliminary points, such as the subjects, to which the attention of the Congress should be directed, the substance and the form of the powers to be given to the respective representatives, and the mode of organizing the Congress, and that, if these points should be satisfactorily arranged, the President would be disposed to accept, in behalf of the United States, the invitation, with which you are provisionally charged.

*"In your note there is not recognised so exact a compliance with the conditions, on which the President expressed his willingness, that the United States should be represented at Panama, as could have been desired. It would have been, perhaps, better if there had been a full understanding between all the American powers, who may assemble by their representatives, of the precise questions, on which they are to deliberate, and that some other matters, respecting the powers of the deputies, and the organization of the Congress, should have been distinctly arranged, prior to the opening of its deliberations. But as the want of the adjustment of these preliminaries, if it should occasion any inconvenience, could be only productive of some delay, the President has determined at once to manifest the sensibility of the United States to whatever concerns the prosperity of the American hemisphere, and to the friendly motives, which have actuated your government in transmitting the invitation, which you have communicated."*

"He has therefore resolved, should the Senate of the United States, now expected to assemble in a few days, give their advice and consent, to send commissioners to the Congress at Panama. Whilst they will not be authorized to enter upon any deliberations, or to concur in any acts, inconsistent with the present neutral position of the United States and its obligations, they will be fully empowered and instructed upon all questions, likely to arise in the Congress, on subjects, in which the nations of America have a common interest."

We have placed a single paragraph of this extract in italics, in order to show, that the disadvantage, to which we have alluded, of an absence of precise information in regard to the subjects to be discussed, together with the powers of the deputies, was, also, seriously felt by the government. In the following December a nomination, accompanied by a formal message, was made to the Senate, of Richard C. An-

derson of Kentucky and John Sergeant of Philadelphia, to be envoys extraordinary and ministers plenipotentiary to the assembly of American nations at Panama.

A topic of constitutional law was developed in this message, that deserves a serious consideration. Though the President referred the matter of the appointments, both to the Senate and House, yet he declares the "measure to be within the constitutional competency of the Executive." The article on the subject of foreign intercourse, applicable to this case in the constitution, is in these words: "The President shall have power to fill up all vacancies, that may happen during the recess of the Senate by granting commissions, which shall expire at the end of their next session."

"In the year 1814, President Madison appointed ministers to negotiate the treaty of Ghent in the recess of the senate. The principle acted upon in this case, however, was not acquiesced in, but protested against by the senate at their succeeding session. And on a subsequent occasion April 20, 1822, during the pendency of the bill for an appropriation to defray the expenses of missions to the South American States, it seemed distinctly understood to be the sense of the senate, that it is only in offices that become vacant during the recess, that the President is authorized to exercise the right of appointing to office, and that in original vacancies, where there has not been an incumbent of the office, such a power under the constitution does not attach to the executive. An amendment, that had been proposed, providing that the president should not appoint any minister to the South American States, but with the advice and consent of the senate, was therefore, withdrawn as unnecessary. And in a report of a committee on the 25th April 1822, it is declared that the words "all vacancies that may happen during the recess of the senate" mean vacancies occurring from death, resignation, promotion, or removal. The word *happen* has reference to some casualty, not provided for by law. If the senate be in session, when offices are created by law, which were not before filled, and nominations be not then made to them by the President, the President cannot appoint after the adjournment of senate, because, in such case, the vacancy does not happen during the recess.

In many instances where offices are created by law, special power is given to the President to fill them in the recesses of the senate ; and in no instance has the President filled such vacancies without the special authority of law."

On the occasion of the Panama mission the same question was again submitted to the senate in an abstract form, but becoming unfortunately embarrassed by considerations, accompanying that political topic, the decision of that body cannot be fairly considered, as altogether divested of some influence, foreign from the discussion. We hope we shall be pardoned for not dismissing the subject without presenting a brief account of the precedents (besides the cases mentioned on a preceding page) that have taken place under this exercise of executive authority. They are, fortunately, not numerous, and can be despatched in a few words. Before doing this, however, we must advert, for a moment, to the peculiarity of our foreign intercourse at the time of the organization of the federal government, terminating at the same moment and by a single act the existence of every diplomatic agent of the confederation. Though the necessity immediately arose of restoring foreign intercourse in every direction, where it had been suspended, there is no instance, during the administration of General Washington, of an original appointment without the advice and approbation of the senate. It has been stated, that John Paul Jones, in May 1792, was appointed, without the advice of the senate, minister to Algiers to negotiate a treaty of peace and commerce. But on examination, this representation turns out to be erroneous in two particulars ;—Commodore Jones was never appointed a minister for any purpose, nor was any diplomatic step taken in relation to Algiers without complying with every formality, prescribed by the constitution. Indeed, it seems to have been the practice of General Washington in all new cases of importance, previous to nominations or diplomatic arrangements of any sort, to submit the matter to the senate for their consideration. This was a wise, judicious disposition and such, as we cannot doubt, was originally intended by the constitution, considering the peculiar

power of the senate in regard to treaties and nominations. The first and only clear, undoubted exercise of this authority (though several cases have been mentioned, which we are satisfied on examination will be found to be within the constitutional competency of the President) is the instance of Mr. Short, nominated, in 1809, by President Jefferson, minister plenipotentiary to the court of St. Petersburg :

“ The emperor of Russia,” says Mr. Jefferson, “ having on several occasions indicated sentiments particularly friendly to the United States, and having expressed a wish through different channels that a diplomatic intercourse should be established between the two countries”—and “ believing in the then *extraordinary* state of the world and under the constant possibility of *sudden* negotiations for peace, that the friendly dispositions of such a power might be advantageously cherished by a mission, which should manifest our willingness to meet his good will, &c.”—On these accounts, President Jefferson appointed Mr. Short, during the recess of the senate, a minister to Russia. Such is the account given of this appointment by the President himself in his message of the 24th February 1809, to the senate. Notwithstanding the extraordinary emergency, which was then said to exist, however, and which, alone as has been stated, was relied upon by President Jefferson to excuse him for the exertion of this then unprecedented exercise of power, the senate on the 27th February, *rejected the nomination by an unanimous vote.*”

During a state of war, we may, by some little refinement of reasoning, imagine a case, that might form an exception to this construction. Upon the presumption that peace is the legitimate end of war, and the acknowledged competency of the President to direct the whole military force of the country for the purpose of harassing and distressing the enemy, it may seem a reasonable exercise of his authority to take advantage of a favourable moment to negotiate. In this country, war is a law enacted in the usual forms, the execution of which depends, to a certain extent, on the President. Peace is either obtained by a treaty, not differing, except as to the object, from any other treaty, or by the mutual cessation of hostilities. It may, therefore, savour somewhat of a meta-

physical distinction, that, Congress having declared war, that exigency is created by statute, in which the President may, by his own authority, employ a commissioner to negotiate a peace.

T We now return to the Panama mission. The nominations, made in December 1825, were approved after a long debate, and by a majority of six voices. The first message of the President to the senate was followed by one to the House in the following March, composed in a forcible manner and with clearness and beauty of expression. We have purposely omitted the state paper of December in order (with the least encumbrance to the reader) to present him with a more minute and finished developement, and a more studied and profound vindication of the plans and objects of the congress.

“ With regard to the objects in which the agents of the United States are expected to take part in the deliberations of that Congress, I deem it proper to premise, that these objects did not form the only, nor even the principal, motive for my acceptance of the invitation. My first and greatest inducement was, to meet, in the spirit of kindness and friendship, an overture made in that spirit by three sister Republics of this hemisphere.

“ Among the topics enumerated in official papers, published by the Republic of Colombia, and adverted to in the correspondence now communicated to the house, as intended to be presented for discussion at Panama, there is scarcely one in which the *result* of the meeting will not deeply affect the interests of the United States. Even those in which the belligerent states alone will take an active part, will have a powerful effect upon the state of our relations with the American, and probably with the principal European states. Were it merely that we might be correctly and speedily informed of the proceedings of the Congress, and of the progress and issue of their negotiations, I should hold it advisable that we should have an accredited agency with them, placed in such confidential relations with the other members, as would ensure the authenticity, and the safe and early transmission, of its reports. Of the same enumerated topics, are the preparation of a manifesto, setting forth to the world the justice of their cause, and

the relations they desire to hold with other christian powers; and to form a convention of navigation and commerce, applicable both to the confederated states and to their allies.

"It will be within the recollection of the House, that immediately after the close of the war of our independence, a measure closely analogous to this Congress of Panama, was adopted by the Congress of our confederation, and for purposes of precisely the same character. Three commissioners, with plenipotentiary powers, were appointed to negotiate treaties of amity, navigation and commerce with all the principal powers of Europe. They met, and resided for that purpose about one year at Paris; and the only result of their negotiations at that time, was the first treaty between the United States and Prussia—memorable in the diplomatic annals of the world, and precious as a monument of the principles, in relation to commerce and maritime warfare, with which our country entered upon her career as a member of the great family of independent nations.

"The late President of the United States, in his message to Congress of the second December 1823, while announcing the negotiation then pending with Russia, relating to the northwest coast of this continent, observed, that the occasion of the discussions to which that incident had given rise, had been taken for asserting as a principle in which the rights and interests of the United States were involved, that the American continents, by the free and independent condition which they had assumed and maintained, were thenceforward not to be considered as subjects for future colonization by any European power. The principle had first been assumed in that negotiation with Russia. It rested upon a course of reasoning equally simple and conclusive. With the exception of the existing European colonies, which it was in no wise intended to disturb, the two continents consisted of several sovereign and independent nations, whose territories covered their whole surface. By this, their independent condition, the United States enjoyed the right of commercial intercourse with every part of their possessions. To attempt the establishment of a colony in those possessions would be to usurp, to the exclusion of others, a commercial intercourse which was the common possession of all. It could not be done without encroaching upon existing rights of the United States. The government of Russia has never disputed these po-



sitions, nor manifested the slightest dissatisfaction at their having been taken. Most of the new American Republics have declared their entire assent to them; and they now propose, among the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of that principle, as well as the means of resisting interference from abroad with the domestic concerns of the American governments.

"In alluding to these means, it would obviously be premature at this time to anticipate that which is offered merely as matter for consultation; or to pronounce upon those measures, which have been or may be suggested. The purpose of this government is to concur in none which would import hostility to Europe, or justly excite resentment in any of her states. Should it be deemed advisable to contract any conventional engagement on this topic, our views would extend no further than to a mutual pledge of the parties to the compact, to maintain the principle in application to its own territory, and to permit no colonial lodgments or establishment of European jurisdiction upon its own soil; and, with respect to the obtrusive interference from abroad, if its future character may be inferred from that which has been, and perhaps still is exercised in more than one of the new states, a joint declaration of its character, and exposure of it to the world, may be probably all that the occasion would require. Whether the United States should or should not be parties to such a declaration, may justly form a part of the deliberation. That there is an evil to be remedied, needs little insight into the secret history of late years, to know, and that this remedy may best be concerted at the Panama meeting, deserves at least the experiment of consideration. A concert of measures, having reference to the more effectual abolition of the African slave trade, and the consideration of the light in which the political condition of the island of Hayti is to be regarded, are also among the subjects mentioned by the minister from the Republic of Colombia, as believed to be suitable for deliberation at the Congress. The failure of the negotiations with that Republic, undertaken during the late administration, for the suppression of that trade, in compliance with a resolution of the House of Representatives, indicates the expediency of listening, with respectful attention, to propositions, which may contribute to the accomplishment of the great end, which was the purpose of that resolution,

while the result of those negotiations will serve as admonition to abstain from pledging this government to any arrangement, which might be expected to fail of obtaining the advice and consent of the Senate, by a constitutional majority to its ratification.

“Whether the political condition of the island of Hayti shall be brought at all into discussion at the meeting, may be a question for preliminary advisement. There are in the political constitution of government of that people, circumstances which have hitherto forbidden the acknowledgment of them by the government of the United States, as sovereign and independent. Additional reasons for withholding that acknowledgment, have recently been seen in their acceptance of a nominal sovereignty, by the *grant* of a foreign prince; under conditions equivalent to the concession by them, of exclusive commercial advantages to one nation, adapted altogether to the state of colonial vassalage, and retaining little of independence but the name. Our plenipotentiaries will be instructed to present these views to the assembly at Panama: and should they not be concurred in, to decline acceding to any arrangement, which may be proposed upon different principles.

“The condition of the islands of Cuba and Porto Rico is of deeper import, and more immediate bearing upon the present interests and future prospects of our union. The correspondence herewith transmitted, will show how earnestly it has engaged the attention of this government. The invasion of both those islands by the united forces of Mexico and Colombia, is avowedly among the objects to be matured by the belligerent states at Panama. The convulsions to which, from the peculiar composition of their population, they would be liable, in the event of such an invasion, and the danger therefrom resulting of their falling ultimately into the hands of some European power, other than Spain, will not admit of our looking at the consequences to which the Congress at Panama may lead, with indifference. It is unnecessary to enlarge upon this topic: or to say more, than that all our efforts in reference to this interest, will be to preserve the existing state of things, the tranquillity of the islands, and the peace and security of their inhabitants.

“And lastly, the Congress of Panama is believed to present a fair occasion for urging upon all the new nations of the south, the just and liberal principles of religious liberty. Not by any inter-

ference whatever, in their internal concerns, but by claiming for our citizens, whose occupations or interests may call them to occasional residence in their territories, the inestimable privilege of worshipping their Creator according to the dictates of their own consciences. This privilege, sanctioned by the customary law of nations, and secured by treaty stipulations in numerous national compacts; secured even to our own citizens in the treaties with Colombia, and with the Federation of Central America, is yet to be obtained in the other South American States and Mexico. Existing prejudices are still struggling against it, which may perhaps be more successfully combatted at this general meeting, than at the separate seats of government of each Republic.

"I can scarcely deem it otherwise than superfluous to observe that the assembly will be in its nature diplomatic and not legislative. That nothing can be transacted there, obligatory upon any one of the states to be represented at the meeting, unless with the express concurrence of its own representatives; nor even then, but subject to the ratification of its constitutional authority at home. The faith of the United States to foreign powers cannot otherwise be pledged, I shall, indeed, in the first instance, consider the assembly as merely *consultative*; and although the plenipotentiaries of the United States will be empowered to receive and refer to the consideration of their government any proposition from the other parties to the meeting, they will be authorized to conclude nothing unless subject to the definitive sanction of this government, in all its constitutional forms. It has therefore seemed to me unnecessary to insist, that every object to be discussed at the meeting should be specified with the precision of a judicial sentence or enumerated with the exactness of a mathematical demonstration. The purpose of the meeting itself, is to deliberate upon the great and common *interests* of several new and neighbouring nations. If the measure is new and without precedent, so is the situation of the parties to it.—That the purposes of the meeting are somewhat indefinite, far from being an objection to it, is among the cogent reasons for its adoption. It is not the establishment of principles of intercourse with one, but with seven or eight nations at once. That, before they have had the means of exchanging ideas and communicating with one another in common, upon these topics, they should have definitively settled and arranged them in concert,

is to require that the effect should precede the cause. It is to exact as a preliminary to the meeting, that for the accomplishment of which, the meeting itself is designed.

"Among the enquiries which were thought entitled to consideration, before the determination was taken to accept the invitation, was that, whether the measure might not have a tendency to change the policy, hitherto invariably pursued by the United States, of avoiding all entangling alliances, and all unnecessary foreign connexions.

"Mindful of the advice given by the Father of our country, in his farewell address, that the great rule of conduct for us in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connexion as possible; and faithfully adhering to the spirit of that admonition, I cannot overlook the reflection, that the counsel of Washington, in that instance, like all the counsels of wisdom, was founded upon the circumstances in which our country and the world around us, were situated at the time when it was given.—That the reasons assigned by him for his advice, were, that Europe had a set of primary interests, which to us had none, or a very remote relation. That hence she must be engaged in frequent controversies, the causes of which were essentially foreign to our concerns. That our *detached* and *distant* situation, invited and enabled us to pursue a different course. That by our union and rapid growth, with an efficient government, the period was not far distant, when we might defy material injury from external annoyance; when we might take such an attitude as would cause our neutrality to be respected; and with reference to belligerent nations, might choose peace or war, as our interests, guided by justice, should counsel.

"Compare our situation and the circumstances of that time with those of the present day, and what from the very words of Washington, then, would be his counsels to his countrymen now? Europe has still her set of primary interests with which we have little or a remote relation. Our distant and detached situation, with reference to Europe, remains the same. But we were then the only independent nation of this hemisphere; and we were surrounded by European colonies, with the greater part of which we had no more intercourse than with the inhabitants of another planet. Those colonies have now been transformed into eight in-

dependent nations, extending to our very borders. Seven of them republics like ourselves; with whom we have an immensely growing commercial, and *must* have, and have already important political connexions. With reference to whom, our situation is neither distant nor detached. Whose political principles and systems of government, congenial with our own, must and will have an action and counteraction upon us and ours, to which we cannot be indifferent if we would."

It will be observed, in one of the extracts just recited, that the President considers the meeting diplomatic, and others, who have gone more into detail on the subject, have compared it to the Congresses assembled at different times in Europe, such as those of Westphalia, Nimeguen, Ryswick, Utrecht, Vienna, Verona and others. It is diplomatic, inasmuch, as it is a meeting of deputies from sovereign states, furnished with powers and instructions, and mutually exhibiting their respective credential letters; but in origin and object it bears no resemblance to either of those general assemblies. They were composed of the deputies of parties, that had been engaged either in the war of thirty years, or of Holland, beginning in 1672, or of Germany of 1688, or of the war for the succession of Spain, beginning in 1702, and the wars commencing with the French Revolution.—At those Congresses not only peace was made between the principal states (France, Spain, the Empire, England, Sweden, the States General, &c.) but a variety of matters, connected with the causes of the war and the maintenance of peace, were settled. Europe, shaken and convulsed during these different conflicts, met in convention to discuss and decide a great number of topics, in which each member, composing that illustrious family of nations, was concerned. England did not refuse to appear at Vienna or Verona, because for twenty years she had been a principal associate, nay the leader in the wars, in which all the powers there represented, had been embarked. But she did refuse to become a member of the Holy Alliance, for her policy forbade it, and, as Mr. Canning declared, it would have been unconstitutional. The true object of resemblance, the just

standard of comparison, therefore, is the Holy Alliance of sovereigns in Europe, and to this body the various declarations or intimations in the state papers of the South American ministers obviously and habitually allude.

This republic has had no connexion, in war or peace, with the South American States, nor any points in discussion of a general nature, nor has she entered into alliances of any sort. The congress could not be held, therefore, for the purpose of settling past differences;—there were none such, nor did any special symptoms or grounds of alarm or uneasiness appear, that should make it necessary to send ministers for the purpose of invoking the contingent aid of the American States. This country was never in a sounder or more secure position, free and remote from danger or assault on every border. The congress of Panama was then designed to be a great confederacy of the American nations in imitation of the great confederacy of European sovereigns, convened and organized solely for general and indefinite objects, with this wide difference, that the European was a league for the protection of the throne against the subject, whereas this government, at least, was not required to enter into alliances to preserve itself from similar casualties.

“Wherein consists our objections to the Holy Alliance? Because they confederate to maintain governments similar to their own, by force of arms, instead of the force of reason and the will of the governed. If we too confederate to sustain by the same means, governments similar to our own, wherein consists the difference except the superiority of our cause? What is their avowed motive? *Self-preservation and the peace of Europe.* What would be ours? *Self-preservation and the peace of America.* I wish to be understood. I detest as much as any man the principles of the Holy Alliance. I yield to no man in my anxious wishes for the success of the Spanish American States. I will go as far as I think any American citizen ought to go to secure to them the blessings of free government. I commend the solicitude, which has been manifested by our government upon this subject, and have, of course, no desire to discourage it. But I am against all alliances, against all armed confederacies, or confederacies of any sort. I care not how specious or how dis-

guised; come in what shape they may, I oppose them. The States in question have the power and the means, if united and true to their principles, to resist any force that Europe can send against them. It is only by being recreant to the principles, upon which their resolution is founded, by suffering foreign influence to distract and divide them that their independence can be endangered."

A resolution was moved in the Senate, declaring that this government possessed under the constitution no power to enter into such an association, but unfortunately it was drifted, by the political current of the moment, into the same channel, that had swept down the rapids other similar abstract questions.

The South American States proposed this confederacy for the obvious and legitimate purpose of resisting the coalition of Spain, Russia, France, Prussia and Austria, the object of which was, on the invitation of Spain in December 1823 to reestablish that power in authority over her colonies, the same coalition having, within the year, restored the Spanish king to his own throne. It was proposed to hold a conference at Paris on this subject, and the doctrines of the congress of Laybach having been already successfully applied to Naples and Spain, the Holy Alliance conceived the splendid project of embracing, in their wide ambitious control, the new world, and of extending their healing, purifying influence to the disorderly States in South America. But the progress of this business was arrested by the declaration of the British minister. In October of the same year Mr. Canning signified in direct terms to the French minister in London, that any attempt of the Holy Alliance to interfere, either by force or menace, in the dispute between Spain and the Colonies would be considered by his Britannic majesty's government as a sufficient motive and reason for immediate acknowledgment.

We are at a loss to perceive any analogy between the mission to Panama and the missions to Europe, during the Continental Congress, and to which a reference has been made. The individuals, employed on those occasions, were furnished with special credential letters to certain courts with instructions to enter into negotiations for treaties of commerce.

They were not sent to meet a congress, or to take part in the discussions or deliberations on general political subjects of a confederacy, but like other diplomatic functionaries, were directed to proceed to certain capitals for the purpose of extending in a defined, specific form, the commercial relations of the country, a matter always acknowledged harmless, as not involving the nation in troublesome alliances.

As some of the objects of this congress were professedly belligerent, and as Mr. Salazar says in his note, that "eventual alliances may be formed, which shall remain secret," a mission, on the part of the United States, has much the appearance of a breach of neutrality, or affords legitimate ground for such a belief. Unless it was belligerent doctrines, or plans to prevent colonization on the American continent, we know of no subjects for discussion at the congress. It was not necessary to send a special mission to form treaties of commerce, to introduce into general practice in this hemisphere the liberal notions concerning the law of nations, the United States have always professed. We already possessed a treaty of commerce, cast, with one exception, in our own mould, with one of those states, (Colombia) and others could have been negotiated at the respective capitals of the states by our ministers.

We come now to look for a moment at the condition of the states, with whom it is proposed we should enter into this confederacy. This well constructed and organized, compact and mature government, trained and drilled to all exigencies, whether at home or abroad, that had passed through, in a brilliant, successful manner, the agony of a long and fearful revolution, the dangers and pressures of a foreign war, to unite with nations, not even in the gristle, just emerging from 300 years of servitude, ignorance and bigotry, every thing loose, disjointed and afloat, not an anchor down, menaced with the fleets and armies of the whole Holy Alliance!—Upon what terms of equality do we enter into this compact? What reciprocity of assistance or of benefit? If all Europe should come, armed at every point, upon these United States, would the people look round for aid or dread the issue?—Or



would they seek it from South America? On the other hand, when the armadas of the Holy Alliance pressed upon the shores of the Southern Continent, with what haste and urgent zeal would our contingent be demanded? This is a war the people would never endure, and if the government had given a thousand pledges, there is not one the nation would redeem.

"I will now call the attention of the Senate to a question of the gravest character and most deeply affecting the dearest interests of the country,—a question growing out of considerations, which have heretofore occupied the best minds and interested the purest hearts our country has produced, 'would it be wise in us to change an established policy upon the subject of political connexions with the foreign states.'—The President has said that 'to form alliances' is not among the motives of our attendance at the Congress. But what description of alliance does he mean? They are of various kinds and of different extent. We are at that congress to stipulate in some form, that we will resist any attempt of colonization by the powers of Europe in this hemisphere, (or within our own borders) and that, in the event of any interference on their part in the struggle between Spain and the Spanish American States, we will make common cause with the latter in resisting it. To this end we have been invited, and upon these points we have promised that our ministers shall have full powers. Call it 'an alliance,' or whatever name you please, it is a *political connexion* at war with the established policy of our government. When it is proposed to subvert a fundamental system in our foreign policy, in the support of which we stand alone among all the nations of the earth,—which, commencing with our government, is endeared to the people, and upon whose deep foundations has been erected the magnificent structure of an unequalled prosperity—it surely becomes those, intrusted with the management of affairs, to pause and weigh with scrupulous exactness the importance of the step.

"At this moment the United States are unfettered. No government has a right to demand our aid or interference in any of the changes in the condition of the world—come what may we are now unembarrassed in our choice. Until lately, I had flattered myself that the acknowledged obligation on the part of our gov-

ernment to maintain that condition was as firmly fixed as its republican character. I had the best reason to think so, because I knew it to be a principle in our public policy, which had, for its support, all that is instructive in experience, all that is venerable in authority. The authority is no less than the parting admonitions of the Father of his country. The earnest, eloquent and impressive appeals upon this subject, contained in his farewell address, are yet, and will I trust long remain fresh in our recollections, nor were the sentiments, thus avowed, mere speculative opinions founded upon an abstract consideration of the subject. No! they were sentiments, matured by reflection and confirmed by actual experience of the practical results, which had arisen from a connexion of the character, he so ardently and so justly deprecated. The sagacious mind of Washington, and the great men who enjoyed his confidence, traced the multiplied embarrassments of the country at that trying period *to the treaty of alliance with France*. Had it not been for that, the task of preserving our neutrality would have been comparatively easy. There would then have been wanting those great sources of discord, unsatisfied claims of right on the part of one belligerent, and food for jealousy on the other. It was under a deep conviction of this truth, that that inestimable man was induced to address his countrymen in language like this.

“The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little *political* connexions as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith; —Here let us stop.

“Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations of her friendships or enmities.

“Our detached and distant situation invites and enables us to pursue a different course. If we remain one people under an efficient government, the period is not far off, when we may defy material injury from external annoyance, when we may take such an attitude, as will cause the neutrality, we may at any time resolve upon, to be scrupulously respected; when belligerent nations under

the impossibility of making acquisitions upon us will not lightly hazard the giving us provocation, when we may choose peace or war, as our interests guided by justice shall counsel.' ”

The consideration, that all treaties are subject to a revision of the Senate, appears, in this case, to be an answer by no means complete and satisfactory. If the Senate, after debate on the motives and objects of an embassy, approve nominations of the Executive, accompanied with a detail and communication of information, a full exposition of the views of government, and the House under similar circumstances of enquiry, grant the appropriations, with what grace, consistency or propriety can treaties (made within the instructions of the diplomatic functionaries employed in the business) be rejected. These considerations amount almost to a pledge to foreign nations. To say the least, a refusal to ratify under these circumstances cannot but be considered as extremely unbecoming and repulsive, and is not a course, by any means, calculated to conciliate confidence and good will. And, even, if these well considered steps, preparatory to a negotiation, do not presuppose an eventual ratification, it may often happen, that the same bodies, in which the previous measures have been discussed and decided, will, under the constitutional provision, exercise the privilege of bestowing the last sanction and confirmation upon their deeds and doctrines. <sup>1</sup> The distinction is, therefore, obviously formal, and the safety nugatory and deceitful. We have, it is true, a recent instance where the government did, in some degree, retrace its own steps;—We refer to the slave trade abolition convention concluded with England; but this was an awkward business, followed by painful, embarrassing explanations. Besides, the identical provision, requiring a revision by the Senate, imposes a double obligation on the government of entering with caution into negotiations. If we claim a right to reject a treaty, we have ourselves proposed, it is certainly but the precept and exercise of a discreet and suitable consideration to give to our terms and projects the least imposing, or tempting air and appearance of pledge or warrant.

We shall conclude this subject with one remark. In the vindications of the Panama mission we have read, (many prepared with care and ability) it has appeared to us, that there was throughout an inherent defect in the application of the principle upon which their reasoning depended. Their authors have seemed to consider, there was an essential difference between a confederacy of European states and one of American. We confess, we perceive none. The governments of the old continent unite for the consolidation of the throne,—those of the new for the defence of the republic. The motives and objects of these respective alliances are different, but for this country to become a member either of one or the other is equally dangerous in its consequences,—equally a violation of the principles of the constitution,—and equally a departure from the policy and practice of the government.

This Congress was first proposed at Panama, but it does not appear ever to have assembled there. Tacubaya, a village a few miles from Mexico, was afterwards appointed, and Mr. Sergeant joined Mr. Poinsett at that capital, for the purpose of attending it. But the former gentleman, after a becoming delay, returned to the United States, not having accomplished a single object of his important and vexatious embassy, the government being fully satisfied that the present situation of the South American states forbade all prospect of a speedy meeting of the Congress.\*

\* Since the first establishment of a diplomatic intercourse with the South American states, some change has been made in the rank of the agents employed. We have at this period (1828) but two ministers with full powers in that country; Joel R. Poinsett of South Carolina in Mexico, and William H. Harrison of Ohio in Colombia. At the Federation of Central America the United States are represented by a chargé, W. B. Rochester of New-York,—at the republic of Buenos Ayres by John M. Forbes, and in Peru by James Cooley. On the other hand, Don Pablo Obregon remained the minister from Mexico till his late lamented death, and Don Jose Maria Salazar from Colombia. From Central America only a chargé has been accredited, Pedro Gonzalez, since the return of Don Antonio J. Canas.

In this general review we have not touched at all upon two important topics, mentioned in the President's message, the abolition of the slave trade and religious freedom. In regard to the first, the policy of the government has been already developed in a distinct manner at the time of the abolition slave trade convention with England;—we do not apprehend any material departure from that determination in future negotiations. And as it respects the establishment of the catholic religion, as a state religion in some of the American republics, the extreme caution and tenderness, with which that most delicate and important subject has always been approached in the constitutions of government, as well as in the municipal ordinances of this people, can leave no doubt on the mind of the entire and scrupulous forbearance, they would, at all times, exercise in regard to the religious concerns of a foreign nation.

As the basis of our government is that of a representative republic, we shall never look but with the greatest satisfaction to the progress and propagation of that principle, both on account of the political sympathies this nation feels on that subject, and because we believe it better calculated than any other to promote general happiness, and to lead, in the most direct as well as solid manner, to the best kind of civilization. But in all other respects there is little to attract our attention to South America. It is only in the way of commerce that we have an intercourse, and that, comparatively, to a limited extent. The two continents of this hemisphere are, at their medium distance, more widely separated than the northern is from the European. With that continent we are connected by a traffic more incessant and more skilfully conducted than any, that has yet been witnessed since the invention of the compass,—by the arts, by literature, fashions, and by every circumstance and association, that enter into the composition of society.

All those matters, that depend on the formal courtesies of diplomacy, this country and the South American states have exactly performed towards each other. With two of them we have entered into conventions for the regulation of trade,

in most respects satisfactory, but our commerce has not received the developement, that was anticipated from the emancipation of the continent, nor a relief from unjust and unreasonable burthens and impositions, that the establishment of free and independent governments there might have been expected to furnish. On the contrary, in consequence of the disturbed state of the country, or an ignorance of just commercial principles, our trade has been exposed to many vexations, not only in the shape of duties, often varying, but of blockades and the exercise of other belligerent rights, not permitted by the laws of nations and forming a lamentable commentary on the declarations of some of those governments concerning neutral rights. Intestine commotions have, also, appeared in Chili, Peru and the federation of the centre of America which, though they have not disturbed our diplomatic relations, have discouraged and embarrassed every other description of intercourse. On the whole, the governments of Mexico and Colombia appear more firmly established than the other states. In the latter the revolution began earlier and in the former there has been less change.

It is now twenty years since the first glimmerings of the revolution were discerned in South America. Unfortunately, the progress, it has made, is, for the most part, still matter of speculation. And nothing can be more hazardous than to attempt to assign a specific form or a probable termination to the fresh changes, now threatened on the west and south border of the continent. But, to say the least, the independence of the country is achieved and some sure steps taken towards the introduction of free, well regulated civil institutions. The sluggishness and, in some respects, the bigotry, unhappily a universal and principal ingredient in the character of the population, if not eradicated, have been violently assailed;—and after twenty years of political changes and disturbances, it is not possible, but that a spirit of enquiry and some activity of mind and a disposition for improvement should become visible. At the same time, little satisfaction is to be derived from a contemplation of the state of things on that continent at the present moment. The con-

viction, that nothing appears fully completed, constantly weighs on the spirits. Those; to whom the task may fall of describing the events of the revolution, are without materials to furnish a perfect picture. The animation and ardour therefore, with which they may enter on the work, will soon be cooled and checked by the extreme irregularity, that has attended the progress of things, and by a darkness and uncertainty, as profound as harassing, in which the concluding scenes of this great political drama are now shrouded and enveloped. The well defined and rapid manner in which our own revolution terminated, the subsequent, surprising prosperity and tranquillity of the country, the speedy and almost invisible establishment of a firm, solid and lasting government have rendered us both impatient and unreasonable in regard to South America. The people of this continent had but a single change to effect. Those of the southern have had a twofold revolution on their hands,—a separation from the parent state and the training of their own population for self-government. The first operation was accomplished by a decree,—the second can only be brought about by time and perseverance.\*

\* Brazil. In one respect Brazil has followed the fate of the other portions of South America ;—a separation has taken place from the parent state. But in all others its political changes and condition differ from those of the whole American hemisphere. A government has been there established upon the principle of the European monarchies, and Don Pedro, the representative of the ancient house of Braganza and elder brother of the reigning King of Portugal, has been crowned and proclaimed Emperor. The Portuguese possessions are thus divided (and in a peaceable manner) into two parts, and each governed by a monarch of the same family. This is a singular state of things and in modern times, at least, has no precedent. Since the separation, the United States have held a diplomatic connexion with both portions of the ancient Portuguese dominion ; in Europe as has already been related in the chapter on Portugal, and in America by the appointment in 1825 of Condé Raguet to be a *chargé d'affaires* to the empire of Brazil. The same year a *chargé*, Jose Sylvestre Rebello, was, also, accredited from that government ; he still remains in this country. At the present time William Tudor of Massachusetts

represents the United States at Rio Janeiro with the same rank. After the independence of Brazil we had reason to expect a great development of our commerce in that quarter. The country is extensive, fertile, with the advantage of a fine climate, produces many valuable staples, and is capable of supporting a large population. But either from the disturbed condition of the government, a deplorable ignorance of the commonest commercial principles or a covetous, arbitrary disposition in the rulers, American trade has not enjoyed, even, the security, or had the advantage of the same regular channels, it possessed under the colonial system. In fact, the scene of the greatest sufferings and the grossest violations of neutral rights has been on the east coast of the southern continent since the war took place between Brazil and the united provinces of the river La Plata. A blockade of all the ports of those provinces by a Brazilian squadron was notified to Mr. Raguet in December 1825 by the Viscount St. Amaro, minister of foreign affairs, an event extremely important to this country on account of our great trade to that portion of South America. The subject, not yet fully adjusted, has, from the winter of 1825, 26, been matter of extreme uneasiness as well as irritation, and has been productive of some angry correspondence.



## CONCLUSION.

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THE peace of Ghent is, properly, the first period in the diplomatic history of this country. It is probable, the foreign relations will, hereafter, assume a different aspect, not only on account of the revolution in South America, but because we cannot expect, again, to witness such another revolution, as was consummated in Europe, by the general pacification of 1814, 15.

After the peace of Paris of the year '83, the political intercourse of the U. States with Europe seemed, for a while, suspended. The war, which led to that event, suddenly brought the country into an active, though not general connexion with the old world ; but when a separation was solemnly assented to by Great Britain, the Americans, having accomplished the object, that impelled them to venture upon the hazardous enterprise of extending their relations across the Atlantic, and having rendered to France all the good offices, that could arise from the appearance of a new people, introduced under her auspices into the family of civilized nations, retired back to their own shores, where, in appearance, forgotten by Europe, they were solely occupied with domestic difficulties of a serious and alarming description. But the proclamation of neutrality of 1793 renewed a political intercourse with fresh animation and redoubled dangers. To this period may, perhaps, with most propriety be assigned the earliest, certainly the thorough incorporation of the political concerns of this nation with the great European movements and systems. The people, with as little capital as credit, immediately entered upon a course of commerce, that fortunately required little of either, but which laid the broad and deep foundations of stores of wealth, that, at this moment, enable the country both to struggle in a successful commercial competition with all Europe, and also, to com-

mence a system of manufactures, in themselves a source and mine of trade and riches. The political relations of the United States with Europe became, therefore, at once minute and extensive, because the commerce of the country was so. On that account our diplomacy may be termed, altogether, of a commercial character ; at least, its legitimate origin being in commerce, our treaties, for the most part, have consisted of arrangements for the regulation of trade and navigation.

In this particular course of negotiation the United States have in modern times taken the lead, though they cannot lay claim to the honour of having been the authors of the system, which, indeed, may be traced back to the Congress of Utrecht, an æra, remarkable, in the commercial history of the world, for the excellence and liberality of maritime principles and regulations there consecrated by treaty stipulations. But, even, if the United States were not the first to convert diplomacy to purposes of commerce, or, (a more recent invention) to propose the principle of reciprocity as the basis of commercial conventions, they are certainly entitled to the applause of having first resisted the despotic, engrossing features of the English navigation laws. The ignorance, or rather indifference of Europe to this system the last century, is incredible. The principal states of the continent, patiently, perhaps, even without a murmur, beheld their trade, shipping and sea ports perishing, withering and decaying under it ; and yet they were never more jealous of their power and dignity, or more ready to waste blood and treasure on insignificant pretences. The war of the revolution was itself, in principle, a commercial one ; and become independent and under the federal government, the United States declared their determination of trading only on equal terms ; they assailed and finally with success, the navigation laws of the mother country by countervailing duties ; and as they were the earliest as well as deadliest foes of that system, they have reaped the first and greatest benefits from its partial downfall. We may, also, remark in this place that the doctrine of commercial reciprocity is the most effectual barrier against the European principle of legitimacy.

Heretofore, nearly all the commerce of the United States, together with every other sort of communication, whether relating to the arts, sciences, literature or diplomacy, has been held with Europe ; for, when this country became independent, every other portion of the American continent was in a condition of severe colonial subjection and oppression. America, following only that course of trade, indicated in the stipulations of treaties, favourable in general, though not on the most liberal principles, speedily attracted the attention of the world, as a great neutral and commercial state ; and asserted claims exceedingly vexatious and embarrassing to the belligerents,—though actually possessing, herself, neither the means nor the power to support and enforce her system of foreign policy. This peculiar and remarkable anomaly in her situation and condition, imparted a novel character to the wars in Europe, in themselves of an extraordinary description. Those wars have now ended ; and (separate from some difficulties respecting the Turks and the Spanish islands in the West Indies) there is, unquestionably, the prospect of a long peace. But not one of the neutral doctrines, for which America has always contended, and from the violation of which she has suffered so much, has yet been secured by treaty stipulation. The only undoubted foundation, laid for peace, consists in the excellent domestic arrangements, nations appear to be making, for their own prosperity, welfare and safety. Congresses have settled many other matters, that were thought necessary for the repose of the world ; but regulations for the determination and preservation of neutral rights, perhaps one of the most effectual methods of preventing wars, have not yet met with that serious and solemn attention, to which they are justly entitled.

But if the negotiation at Ghent resulted in little else than a treaty of peace, and if our diplomatic arrangements since that period have not embraced a satisfactory adjustment of those maritime questions, that terminated in hostilities, still, we think, there are some points of our foreign policy, preceding that state of things, which will not now meet with a

decided approbation. The doctrine of negotiation in the first instance, and in the second, of forbearance and self-denials, was relied on with a confidence, both originally mistaken and ultimately pursued to a pernicious extent. This course of proceeding may well be accounted for from an uncertainty and mistrust, generally entertained, of the resources and strength of the nation. Recourse was naturally had to those expedients, that involved losses without dangers, and as the only war, in which we had been engaged, was of a most peculiar character, it could not be considered a precedent or a rule of conduct for any future one. America, a new state, was thrust hastily, with all the attributes of sovereignty, into the midst of the old nations of Europe. Not having grown up with them, trying her wings, feeling her strength as she advanced to mature age along with those powers, her relative position was not ascertained, and acts of the parties engaged in the European wars, were patiently endured, not from want of sagacity and spirit, both to perceive and resist the injustice and wrong, but from a well founded doubt and distrust of the real strength of the people. The late war with England, as it happened with the most powerful of the belligerents and with the only nation, that could do us much mischief, has entirely removed all apprehension and uneasiness on that score. The effect that war has had on the national character, will extend itself to the government; and if the country should hereafter be, again, unfortunately exposed to similar indignities and outrages, it is not likely that they will be met with the same resigned spirit and an equal portion of forbearance. We mention this subject entirely in connexion with the business of the general diplomacy of the nation, and, as we have assigned to the peace of Ghent the termination of the first period in our diplomatic history, we may, perhaps, without indulging too great partiality for a formal, arbitrary arrangement, place at that epoch the commencement of a new system, both commercial and political.

Since the pacification of 1814, "eight sovereign and in-

dependent nations" have been erected, in South America, out of the ruins of the colonial governments. With these states, this country will probably have a great commercial and diplomatic intercourse. On the subject of neutrality, their interests will be the same ; and from their situation, they will be equally removed from the power and ascendancy of Europe. The United States will naturally take the lead in all the concerns of this part of the world ; and, without entering into coalitions or associations of any description, the influence of their institutions will be more extensively felt,—and the doctrines of their neutral policy and commercial intercourse will, hereafter, find a wider sympathy, and will be asserted with a greater prospect of support and encouragement. A portion of Europe is engaged in resisting and counteracting this spirit and disposition ;—in reinstating, in its ancient strength and grandeur, what, in the French idiom, is called the monarchical principle. We have no reasons, perhaps, to expect wars from the opposition or rivalry of these systems,—but different races of men will certainly be prepared under their influence ; and, whatever effect the spirit of free enquiry and general education may have on the relations of nations with each other, (for the experience of the world has not yet shown, that the most enlightened states are the least exposed to wars) there can be no doubt but that changes and improvements in governments will, hereafter, be accomplished in a more gradual and satisfactory manner, and with less danger of violence and bloodshed.

## APPENDIX.

( N<sup>o</sup>. I. )

### TREATIES WITH FRANCE.

1. Of *amity and commerce*, of the 6th of February 1778 ; negotiated at *Paris*, by C. A. Gerard, B. Franklin, Silas Deane and Arthur Lee. Ratified by Congress on the 4th of May 1778. Annulled by act of Congress of July 7, 1798.

2. Of *alliance*, of the 6th of February 1778 ; negotiated at *Paris*, by C. A. Gerard, B. Franklin, Silas Deane and Arthur Lee. Ratified by Congress on the 4th of May 1778. Annulled by act of July 7, 1791.

3. Contract concerning the *loan and repayment of money*, of the 16th of July, 1782 ; framed at *Versailles*, by Gravier de Vergennes and B. Franklin. Ratified by Congress on the 22d of January 1783.

4. Convention concerning *consuls and vice consuls*, of the 14th of November 1778 ; negotiated at *Versailles*, by L. C. de Montmorin and Th: Jefferson. Annulled July 7, 1798.

5. Convention for *terminating differences*, of the 30th of September 1800 ; negotiated at *Paris*, by Oliver Ellsworth, William Richardson Davie, William Vans Murray, and Joseph Bonaparte, Charles Pierre Claret Fleurieu and Pierre Louis Røederer. Provisionally ratified on the 18th of February 1801 ; and finally declared to have been ratified on the 21st of December 1801. Expired.

6. *Ceding Louisiana*, of the 30th of April 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe and Barbe Marbois. Ratified on the 21st of October 1803.

7. Convention for the *payment of sixty millions of francs* to France for the cession of Louisiana, of the 30th of April 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe and Barbe Marbois. Ratified on the 21st of October 1803.

8. Convention to *secure the payment of the sum due by France to citizens of the United States*, of the 29th of April 1803; negotiated at *Paris*, by Robert R. Livingston, James Monroe and Barbe Marbois. Ratified on the 21st of October 1803.

9. Convention of *navigation and commerce* of the 24th of June 1822; negotiated at *Washington*, by J. Q. Adams on the part of the United States, and S. Hyde de Neuville on the part of France. Ratified 12th of February 1823. In force till one of the parties renounce it, giving six months notice.

#### TREATIES WITH THE STATES GENERAL OF THE UNITED NETHERLANDS.

1. Of *amity and commerce*, of the 8th of October 1782; negotiated at the *Hague*, by John Adams, George Van Randwyck, B. V. D. Santheuvel, P. V. Bleiswyk, W. C. H. Van Lynden, D. I. Van Heeckeren, Joan Van Kuffeler, F. G. Van Dedem and H. Tjassens. Ratified by Congress on the 23d of January 1783.

2. Convention concerning *vessels recaptured*, of the 8th of October 1782; negotiated at the *Hague*, by John Adams, George Van Randwyck, B. V. D. Santheuvel, P. V. Bleiswyk, W. C. H. Van Lynden, D. I. Van Heeckeren, Joan Van Kuffeler, F. G. Van Dedem and H. Tjassens. Ratified by Congress on the 23d of January 1783.

3. Treaty of *commerce and navigation* with the free cities of Lubeck, Bremen and Hamburg. The treaty was negotiated for twelve years, and the ratifications were exchanged in June 1828.

#### TREATIES WITH SWEDEN.

1. Of *amity and commerce*, of the 3d of April 1783; negotiated at *Paris*, by Gustavus Philip de Creutz and Benjamin Franklin. Ratified by Congress on the 29th of July 1783. By a separate article to this treaty, it was to have full effect only for fifteen years, counting from the day of the ratification. It consequently expired on the 29th of July 1798.

2. Treaty of *amity and commerce*, of the 4th of September 1816; negotiated at *Stockholm*, by Jonathan Russell, on the part of the United States, and the Counts d'Engerstroem and A. G. de Morner for Sweden. Ratified September 25, 1818. In force for eight years from the day of ratification.

3. Treaty of *commerce and navigation*; negotiated in July 1827, at *Stockholm*, by J. J. Appleton for the United States, and the Count de Wetterstedt for Sweden. In force for twelve years.

#### TREATIES WITH GREAT BRITAIN.

1. Provisional articles of *peace*, of the 30th of November 1782; negotiated at *Paris*, by Richard Oswald, John Adams, Benjamin Franklin, John Jay and Henry Laurens. Sanctioned by Congress on the 11th of April 1783.

2. Armistice, declaring a *cessation of hostilities*, of the 20th of January 1783; negotiated at *Versailles*, by Alleyne Fitz Herbert, John Adams and Benjamin Franklin. Sanctioned by Congress on the 11th of April 1783.



3. *Definitive treaty of peace*, of the 3d of September 1783 ; negotiated at *Paris*, by David Hartley, John Adams, Benjamin Franklin and John Jay. Ratified by Congress on the 14th of January 1784.

4. *Treaty of amity, commerce and navigation*, of the 19th of November 1794 ; negotiated at *London*, by William Wyndham (baron Grenville), and John Jay. The ratifications were exchanged at London, on the 28th day of October 1795. The *first explanatory article* to this treaty was ratified on the 9th of May 1796. The *second explanatory article* was ratified on the 5th of June 1798. The former of these explanatory articles was negotiated at *Philadelphia*, on the 4th of May 1796, by P. Bond and Timothy Pickering ; and the latter at *London*, on the 15th of March 1798, by Lord Grenville and Rufus King.

5. Convention relative to the *execution of the 6th article* of the treaty of the 19th of November 1794, of the 8th January 1802 ; negotiated at *London*, by Robert Banks Jenkinson (Lord Hawkesbury), and Rufus King. Ratified on the 26th of April 1802.

6. Of *peace and amity*, of the 24th of December 1814 ; negotiated at *Ghent*, by James lord Gambier, Henry Goulbourn and William Adams, and John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell and Albert Gallatin. Ratified on the 17th of February 1815.

7. Convention to *regulate commerce* between the territories of the United States and his Britannic Majesty, of the 3d of July 1815 ; negotiated at *London*, by John Quincy Adams, Henry Clay and Albert Gallatin, on the part of the United States, and Frederick J. Robinson, Henry Goulbourn and William Adams, on the part of Great Britain. Ratified by the Prince Regent, on the 31st of July 1815, and by the President and Senate on the 22d of December 1815 ; on which latter day ratifications were exchanged at Washington.

8. Convention respecting *fisheries, boundaries, &c.* of the 20th of October 1818; negotiated at *London*, by Albert Gallatin and Richard Rush on the part of the United States, and Frederick J. Robinson and Henry Goulbourn on the part of Great Britain. Ratifications exchanged at Washington on the 30th of January 1819. By this convention, the provisions of the convention of London of the 3d of July 1815, are continued for ten years.

9. Convention of St. Petersburg of the 12th of July 1822, respecting *the meaning of the 1st article of the treaty of Ghent, in relation to an indemnification for slaves taken from the United States during the late war with Great Britain*; negotiated at *St. Petersburg*, by Henry Middleton on the part of the United States, Count Nesselrode and Count Capodistrias on the part of Russia, and Charles Bagot on the part of Great Britain. Ratifications exchanged on the 10th of January 1823.

10. Convention awarding the *amount of indemnification* under the St. Petersburg convention of the 13th of November 1826; negotiated at *London*, by Albert Gallatin on the part of the United States, and William Huskisson and Henry U. Addington on the part of Great Britain. Ratifications exchanged in London on the 6th of February 1827.

11. Decision of commissioners under the 4th article of the treaty of Ghent, respecting *certain islands in the bay of Passamaquoddy*; adjusted by John Holmes on the part of the United States, and Thomas Barclay on the part of Great Britain.

12. Declaration of commissioners under 4th article treaty of Ghent.

13. Decision of commissioners under 6th article treaty of Ghent, at *Utica*, New-York, June 18, 1822.

14. Convention to refer the decision of the 5th article of the treaty of Ghent to a friendly sovereign, negotiated at London, September 1827, by Albert Gallatin for the United States, and Charles Grant and Henry Unwin Addington for Great Britain. Ratified May 14, 1828.

#### TREATIES WITH PRUSSIA.

1. Of *amity and commerce*. This treaty bears no special date, but was signed by the negotiators as follows: by B. Franklin at *Passy*, on the 9th of July 1785; by Thomas Jefferson at *Paris*, on the 28th of July 1785; by John Adams at *London*, on the 5th of August 1785; and by F. G. D. Thulemeyer at the *Hague*, on the 10th of September 1785. By the 27th article it was limited to ten years, and expired in 1796. Ratified by Congress on the 17th of May 1786.

2. Of *amity and commerce*, of the 11th of July 1799; negotiated at *Berlin*, by John Quincy Adams, Charles William count of Finckenstein, Philip Charles of Alvensleben, and Christian Henry Curce. Ratifications exchanged at Berlin on the 22d of June 1800. By the 27th article, it was limited to ten years, and expired on the 22d of June 1810.

#### TREATIES WITH SPAIN.

1. Of *friendship, limits and navigation*, of the 27th of October 1795; negotiated at *San Lorenzo el Real*, by Thomas Pinckney on the part of the United States, and the Prince of Peace for Spain. Ratified on the 3d of March 1796.

2. A convention between his Catholic Majesty and the United States of America, for the indemnification of those who have sustained *losses, damages or injuries*, in conse-

quence of the excesses of individuals, of either nation, during the late war, contrary to the existing treaty or the laws of nations ; negotiated at *Madrid*, on the 11th August 1802, by Charles Pinckney on the part of the United States, and Pedro Cevallos on the part of Spain. Ratified by the President and Senate on the 9th January 1804 ; and by the King of Spain on the 9th July 1818.

3. Treaty of *amity, settlement and limits*, between the United States of America and his Catholic Majesty ; negotiated at *Washington*, the 22d February 1819, by John Quincy Adams on the part of the United States, and Luis de Onís on the part of Spain. Ratified by the President and Senate on the 22d February 1819, and by the King of Spain on the 24th October 1820.

#### TREATY WITH RUSSIA.

1. A *convention* between the United States of America and his Majesty the Emperor of all the Russias ; negotiated at *St. Petersburg* on the 5th—17th day of April, by Henry Middleton on the part of the United States, and Count Nesselrode and Pierre de Poletica on the part of Russia. Ratified on the 12th January 1825.

#### TREATY WITH DENMARK.

1. General convention of *friendship, commerce and navigation*, between the United States of America and his Majesty the King of Denmark ; negotiated at *Washington*, on the 26th April 1826, by Henry Clay on the part of the United States, and Peter Pedersen on the part of Denmark. Ratified on the 10th of August 1826. Convention to be in force ten years.

## BARBARY POWERS.

### TREATY WITH MOROCCO.

1. Of *peace and friendship*, of the 28th June 1786 ; negotiated at *Morocco*, by Thomas Barclay on the part of the United States, under an appointment from John Adams and Thomas Jefferson, ministers plenipotentiary of the United States at London and Paris. Ratified by Congress on the 18th of July 1787.

### TREATIES WITH ALGIERS.

1. Of *peace and amity*, of the 5th of September 1795 ; negotiated at *Algiers*, by Joseph Donaldson, Jun., under an appointment from David Humphreys, commissioner plenipotentiary of the United States. Ratified on the 2d of March 1796. Annulled by war.

2. Treaty of *peace and amity*, of June 30, 1815, concluded by Commodore Decatur and William Shaler on the part of the United States of America, and his Highness Omar Pashaw, Dey of Algiers. Ratified by the President, by and with the advice and consent of the Senate, on the 26th December 1815.

### RENEWED TREATY WITH ALGIERS.

3. Treaty of *peace and amity*, December 23, 1816, concluded by W. Shaler and I. Chauncey on the part of the United States, and the Dey and Regency of Algiers.

### TREATIES WITH TRIPOLI.

1. Of *peace and friendship*, of the 4th of November 1796 ; negotiated by Joel Barlow, under an appointment from Da-

vid Humphreys, commissioner plenipotentiary of the United States. Ratified on the 10th of June 1797. Annulled by war.

2. Of *peace and amity*, of the 4th of June 1805; negotiated at *Tripoli*, by Tobias Lear, on the part of the United States. Ratified on the 17th of April 1806.

#### TREATIES WITH TUNIS.

1. Of *peace and friendship*, of the 26th March 1799; negotiated by Joseph S. Famin, chargé d'affaires, &c., and as to certain alterations, by William Eaton and James Leander Cathcart. Ratified on the 10th of January 1800.

2. Altered articles in the foregoing treaty of *peace and friendship* with Tripoli.

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### NEW NATIONS OF SOUTH AMERICA.

#### TREATY WITH COLOMBIA.

1. General convention of *peace, amity, navigation and commerce*, of October 3, 1824; negotiated at *Bogota*, by Richard Clough Anderson on the part of the United States, and Pedro Gual on the part of the Republic of Colombia. Ratified May 31, 1825.

#### TREATY WITH CENTRAL AMERICA.

1. Convention of *peace, amity, commerce and navigation*, of the 5th of December 1825, between the United States and the Federation of the Centre of America; negotiated at *Washington*, by Henry Clay on the part of the United States, and Antonio Jose Canas on the part of the Federation of the Centre of America. Ratifications exchanged at Guatemala, on the 2d of August 1826.

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**STATEMENT—Continued.**

| NAMES.                           | OUTFIT.                                      | RETURN.      | SALARIES.   | CONTIN-<br>GENCIES. | TOTAL.         |
|----------------------------------|----------------------------------------------|--------------|-------------|---------------------|----------------|
| <b>TO RUSSIA.</b>                |                                              |              |             |                     |                |
| William Short,                   | - - - from 1st Oct. 1808 to 10th May, 1809   | 2,250 00     | 5,473 37    | 177 59              | 7,901 56       |
| John Q. Adams,                   | - - - " 5th Aug. 1809 to 27th Feb. 1815      | 9,000 00     | 50,104 00   | 5,153 54            | 64,657 54      |
| William Pinkney                  | - - - " 7th March, 1816 to 16th Feb. 1818    | 2,250 00     | 17,550 00   | 1,232 84            | 30,032 84      |
| George W. Campbell,              | - - - " 18th April, 1818 to 8th July, 1820   | 2,250 00     | 20,458 32   | 4,458 57            | 35,753 89      |
| Henry Middleton,                 | - - - " 6th April, 1820 to 30th Sept. 1821   | 9,000 00     | 12,137 67   | 629 03              | 21,766 70      |
| Levett Harris, Chargé d'Affaires | - - - " 17th April, 1814 to 21st Feb. 1817   | 1,125 00     | 12,812 50   | 3,627 72            | 17,555 22      |
| <b>TO PRUSSIA.</b>               |                                              |              |             |                     |                |
| John Q. Adams,                   | - - - from 1st Jan. 1801 to 26th April, 1801 | 2,250 00     | 2,860 27    |                     | 5,110 27       |
| <b>TO SWEDEN.</b>                |                                              |              |             |                     |                |
| Jonathan Russell,                | - - - from 25th Jan. 1814 to 1st Oct. 1816   | 9,000 00     | 24,172 60   | 1,184 91            | 34,357 51      |
|                                  | - - - " 15th July, 1817 to 31st Dec. 1818    | 2,250 00     | 13,133 15   | 707 97              | 14,111 02      |
| <b>TO SPAIN.</b>                 |                                              |              |             |                     |                |
| David Humphreys,                 | - - - from 1st Jan. 1801 to 9th Dec. 1801    | 2,250 00     | 8,432 88    | 888 63              | 11,571 51      |
| Charles Pinkney,                 | - - - " 10th July, 1801 to 2d Oct. 1805      | 2,250 00     | 38,071 53   | 49,321 23           | 89,321 23      |
| James Monroe,                    | - - - " 8th Oct. 1804 to 17th July, 1805     | 2,250 00     | 11,744 83   | 1,744 83            | 25,739 66      |
| James Bowdoin,                   | - - - " 10th May, 1805 to 1st Oct. 1807      | 2,250 00     | 21,517 80   | 773 81              | 33,541 61      |
| George W. Erving,                | - - - " 24th Sept. 1814 to 28th Aug. 1815    | 2,250 00     | 8,364 12    | 1,862 02            | 49,366 24      |
|                                  | - - - " 10th April, 1816 to 15th May, 1819   | 2,250 00     | 27,890 10   | 2,843 06            | 37,843 06      |
| John Forsyth,                    | - - - " 18th Feb. 1819 to 31st Dec. 1821     | 1,125 00     | 15,800 00   | 2,843 06            | 25,094 61      |
| G. W. Erving, Chargé d'Affaires  | - - - " 24th Oct. 1805 to 5th April, 1810    | 2,250 00     | 20,035 27   | 3,934 34            | 26,219 51      |
| <b>TO PORTUGAL.</b>              |                                              |              |             |                     |                |
| William L. Smith,                | - - - from 1st Jan. 1801 to 9th Sept. 1801   | 2,250 00     | 6,213 69    | 194 05              | 8,657 74       |
| Thomas Sumter, to the Brazils,   | - - - " 9th July, 1809 to 24th July, 1819    | 2,250 00     | 90,351 30   | 18,264 42           | 119,905 72     |
| John Graham, ditto,              | - - - " 12th March, 1819 to 10th June, 1820  | 2,250 00     | 11,255 50   | 150 59              | 22,656 09      |
| <b>TO THE TWO SICILIES.</b>      |                                              |              |             |                     |                |
| William Pinkney,*                | - - - - -                                    | 9,000 00     |             | 1,995 23            | 10,995 23      |
|                                  |                                              | \$265,500 00 | \$59,625 00 | \$141,296 55        | \$1,319,877 83 |
| <b>TOTAL,</b>                    |                                              |              | \$83,456 28 |                     |                |

\* Official documents.

• Official documents.



( N<sup>o</sup>. III. )

## PRIVILEGES OF FOREIGN MINISTERS.

*Extract from the act of April 30, 1790.*

SEC. 25. *Be it enacted*, That if any writ or process shall, at any time hereafter, be sued forth or prosecuted by any person or persons, in any of the courts of the United States, or in any of the courts of a particular state, or by any judge or justice therein, respectively, whereby the person of any ambassador or other public minister of any foreign prince or state, authorized and received as such by the President of the United States, or any domestic or domestic servant of any such ambassador or other public minister, may be arrested or imprisoned, or his or their goods or chattels be distrained, seized, or attached, such writ or process shall be deemed and adjudged to be utterly null and void, to all intents, construction and purposes, whatsoever.

SEC. 26. *And be it enacted*, That in case any person or persons shall sue forth or prosecute any such writ or process, such person or persons, and all attorneys or solicitors prosecuting or soliciting in such case, and all officers executing any such writ or process, being thereof convicted, shall be deemed violators of the laws of nations and disturbers of the public repose, and imprisoned not exceeding three years, and fined at the discretion of the court: *Provided nevertheless*, That no citizen or inhabitant of the United States, who shall have contracted debts prior to his entering into the service of any ambassador or other public minister, which debts shall be still due or unpaid, shall have, take, or receive, any benefit of this act; nor shall any person be proceeded against by virtue of this act, for having arrested or sued any other domestic servant of any ambassador or other public minister, unless the name of such servant be first registered in the office of the Secretary of State, and by such secretary transmitted to the Marshal of the district in which Congress shall reside, who shall, upon receipt thereof, affix the same in some public place in his office, whereto all persons may resort and take copies without fee or reward.

SEC. 27. *And be it enacted*, That if any person shall violate any safe conduct or passport duly obtained, and issued under the autho-

rity of the United States, or shall assault, strike, wound, imprison, or in any other manner infract the law of nations, by offering violence to the person of an ambassador or other public minister, such person so offending, on conviction, shall be imprisoned not exceeding three years, and fined at the discretion of the court. [*Approved, April 30, 1790.*]

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An act fixing the compensation of public Ministers, and of Consuls residing on the coast of Barbary, and for other purposes.

SEC. 1. *Be it enacted, &c.* That the President of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of nine thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any chargé des affaires, a greater sum than at the rate of four thousand five hundred dollars per annum, as a compensation for all his personal services and expenses; nor to the secretary of any legation or embassy to any foreign country, or secretary of any minister plenipotentiary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any consul who shall be appointed to reside at Algiers, a greater sum than at the rate of four thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any other consul who shall be appointed to reside at any other of the states on the coast of Barbary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor shall there be appointed more than one consul for any one of the said states: *Provided*, It shall be lawful for the President of the United States to allow to a minister plenipotentiary, or chargé des affaires, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year's full salary of such minister or chargé des affaires; but no consul shall be allowed an outfit in any case whatever, any usage or custom to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That to entitle any chargé des affaires, or secretary of any legation or embassy to any foreign country, or secretary of any minister plenipotentiary, to the compensation hereinbefore provided, they shall, respectively, be appointed by the President of the United States, by and with the ad-

vice and consent of the senate ; but in the recess of the senate, the President is hereby authorized to make such appointments, which shall be submitted to the senate at the next session thereafter, for their advice and consent ; and no compensation shall be allowed to any chargé des affaires, or any of the secretaries hereinbefore described, who shall not be appointed as aforesaid : *Provided*, That nothing herein contained shall be construed to authorize any appointment of a secretary to any chargé des affaires, or to any consul residing on the Barbary coast, or to sanction any claim against the United States for expense incident to the same, any usage or custom to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That where any sum or sums of money shall be drawn from the treasury, under any law making appropriation for the contingent expenses or intercourse between the United States and foreign nations, the President shall be, and he hereby is, authorized to cause the same to be duly settled, annually, with the accounting officers of the treasury, in the manner following, that is to say : By causing the same to be accounted for, especially, in all instances wherein the expenditure thereof may, in his judgment, be made public, and by making a certificate of the amount of such expenditures as he may think it advisable not to specify ; and such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended.

SEC. 4. *And be it further enacted*, That it shall not be lawful for the consuls of the United States, residing on the Barbary coasts, or either of them, to expend, or to disburse, or pay, or cause to be paid, for any purpose, or on any pretence whatever, not authorized by law, to any one of the Barbary powers, or to the officers or subjects thereof, a greater sum than three thousand dollars in any one year, with intent to charge the United States with the same, without first obtaining a special approbation, in writing, from the President of the United States, for that purpose. And every such consul who shall, after notice of this act, expend or disburse, or pay, or cause to be paid, for any purpose, or on any pretence whatever, not authorized by law, to any one of the Barbary powers, or to the officers or subjects thereof, a greater sum than three thousand dollars in any one year, or shall be aiding or assisting therein, without first obtaining the approbation of the President as aforesaid, shall forfeit and pay to the treasury of the United States

a sum equal to one-half his yearly compensation : and shall, moreover, stand charged with, and be accountable for, all moneys so disbursed or paid, contrary to the provisions of this act.

SEC. 5. *And be it further enacted*, That, from and after the first day of November next, no consul of the United States residing on the Barbary coast shall own, in whole or in any part, any ship or vessel, to be concerned, directly or indirectly, in the exportation from, or importation to, any of the states on the coast of Barbary, of any goods, wares, or merchandise, on penalty that every consul so offending, and being thereof convicted, shall, for every offence, forfeit a sum not exceeding one thousand dollars.

SEC. 6. *And be it further enacted*, That it shall be the duty of the consuls residing on the Barbary coast to transmit to the Secretary of the Treasury, annually, an account of all moneys received, and of all disbursements or expenditures made, by them, respectively, for or on account of the United States, and the particular purpose to which the moneys have been applied, and the vouchers to support the same ; and the Secretary of the Treasury shall transmit to Congress, within two months after the commencement of the first session thereof, in every year, a statement of all the moneys disbursed from the treasury of the United States, for expenses of intercourse with the Barbary powers during the preceding year, therein noting as far as can be ascertained at the treasury, the sums received by the respective agents or consuls, and the purposes to which the same have been applied.

SEC. 7. *And be it further enacted*, That the act, entitled " An act in addition to the law of the United States concerning consuls and vice consuls," approved July sixth, one thousand seven hundred and ninety-seven, and the act, entitled " An act to ascertain the compensation of public ministers," approved May the tenth, one thousand eight hundred, be, and the same are hereby, repealed. [*Approved, May 1, 1810.*]

## ( No. IV. )

An act to repeal so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares and merchandise, imported into the United States, as imposes a discriminating duty on tonnage, between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States.

SEC. 1. *Be it enacted, &c.* That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares and merchandise, imported into the United States, as imposes a discriminating duty on tonnage, between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, be, and the same are hereby, repealed, so far as the same respects the produce or manufacture of the nation to which such foreign ships or vessels may belong. Such repeal to take effect in favour of any foreign nation, whenever the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished. [*Approved, March 3, 1815.*]

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An act concerning discriminating duties of Tonnage and Import.

SEC. 1. *Be it enacted, &c.* That, from and after the first day of January, one thousand eight hundred and twenty-four, during the continuance of this act, and under the limitations hereinafter mentioned, so much of the several acts imposing duties on the tonnage of vessels in the ports of the United States, as imposes a discriminating duty between foreign vessels and vessels of the United States, is hereby suspended, so far as respects vessels truly and wholly belonging to subjects or citizens of the Kingdom of the Netherlands; of Prussia; of the Imperial Hanseatic Cities of Hamburg, Lubeck and Bremen; of the Dukedom of Oldenburg; of the Kingdom of Norway; of the Kingdom of Sardinia and of the Empire of Russia.

SEC. 2. *And be it further enacted,* That so much of the several acts imposing duties on goods, wares and merchandise, imported into the United States, as imposes a discriminating duty between

goods imported into the United States in foreign vessels, and in vessels of the United States be, and the same is hereby, suspended, so far as the same respects the produce or manufactures of the territories in Europe, or any of the above mentioned nations, or such produce and manufactures as can only be, or most usually are, first shipped from a port or place in the said territories in Europe, or either of them, respectively, the same being imported in vessels truly and wholly belonging to the subjects or citizens of each of the said nations respectively, the vessels of each nation importing its own produce and manufactures as aforesaid.

*Sec. 3. And be it further enacted,* That the suspension of the discriminating duties of tonnage and impost, in the two preceding sections of this act prescribed, shall continue, in behalf of each of the above mentioned nations, on condition that, and so long as, the vessels of the United States, truly and wholly belonging to the citizens thereof, and all goods and merchandise, of the produce and manufacture of the United States, laden therein, and imported into any of the ports of the said nations in Europe, respectively, shall be exempted from all and every discriminating duty of impost or tonnage, direct or indirect, whatsoever, other or higher than is levied upon the vessels and merchandise therein imported, belonging to the subjects or citizens of each of the said nations, respectively. But if, in any of the territories in Europe, of either of the said nations, any such discriminating duty shall, at any time, be imposed or levied on vessels wholly belonging to the citizens of the United States, or on the merchandise imported as aforesaid in them, then, and from that time, the said suspension herein prescribed shall cease, and determine, so far as respects the vessels and merchandise imported into the United States in them, of such nations: and all the provisions of the acts imposing discriminating foreign tonnage and impost duties in the United States, shall revive and be in full force with regard to the said nation.

*Sec. 4. And be it further enacted,* That, upon satisfactory evidence being given to the President of the United States, by the government of any foreign nation, that no discriminating duties of tonnage or impost are imposed or levied within the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon merchandise, the produce or manufacture thereof, imported in the same, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating

duties of tonnage and impost within the United States are, and shall be, suspended and discontinued, so far as respects the vessels of the said nation, and the merchandise of its produce or manufacture, imported into the United States in the same: the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and merchandise as aforesaid, thereon laden, shall be continued, and no longer. [*Approved, January 7, 1824.*]

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An act to exempt Swedish and Norwegian vessels, and the merchandise imported therein, from the payment of discriminating duties of tonnage and impost, for a limited time, and for other purposes.

SEC. 1. *Be it enacted, &c.* That, from and after the date of this act, until the termination of the next session of Congress, vessels truly and wholly belonging to the subjects of the King of Sweden and Norway, arriving in the United States, in ballast or with cargoes, shall be exempted from the payment of any other or higher duties or charges whatsoever, than vessels of the United States are required to pay under like circumstances; that merchandise, the produce and manufacture of the territories of the King of Sweden and Norway, imported in Swedish or Norwegian vessels, shall not be subjected to any other or higher duties than are levied on the same kinds of merchandise when imported in American vessels; and that the exemption or privilege allowed by this act shall extend to vessels arriving, and merchandise imported, from the Swedish colony of St. Barthelemy: *Provided*, That the owners of vessels, arriving from said colony in the United States, shall be inhabitants of that colony, and there established and naturalized, and shall have caused their vessels to be there naturalized.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby directed to cause to be repaid or remitted, all alien or discriminating duties of tonnage or impost, which since the twenty-fifth of September last may have been paid, or secured to be paid, on vessels of the description mentioned in the first section of this act, or on merchandise imported in such vessels; for the purpose of which repayment, any money in the treasury not otherwise appropriated, is hereby appropriated. [*Approved, 22d February 1827.*]

An act to equalize the duties on vessels of the Republic of Columbia (Colombia), and their cargoes.

*Be it enacted, &c.* That no other or higher rate of duties shall be imposed or collected on vessels of the Republic of Columbia (Colombia), and their cargoes, consisting of articles of the growth, produce, or manufacture of said Republic, than are, or may be, payable on vessels of the United States, with cargoes composed as aforesaid.

SEC. 2. *And be it further enacted,* That the Secretary of the Treasury be, and he is hereby authorized to return all duties which have been assessed since the twenty-ninth January, eighteen hundred and twenty-six, on vessels of the Republic of Columbia (Colombia), and their cargoes composed of articles of the growth, produce, or manufacture of the said Republic, beyond the amount which would have been payable on vessels of the United States and cargoes, composed as aforesaid, imported therein; and that the same allowances of drawback on exportations, in vessels of the Republic of Columbia (Colombia), be made as on the like exportations in vessels of the United States.

SEC. 3. *And be it further enacted,* That this act shall continue and be in force during the time that the equality for which it provides shall, in all respects, be reciprocated in the ports of the Republic of Columbia (Colombia); and if, at any time hereafter, the said equality shall not be reciprocated in the ports of the said Republic, the President may, and he is hereby authorized to issue his proclamation, declaring that fact, whereupon this act shall cease and determine. [*Approved, 20th April 1826.*]

END.

















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